

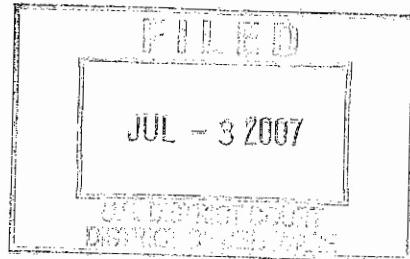
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ISAIAS R. ORTIZ )  
Petitioner )  
v. ) C.V. No. 07 - 421  
THOMAS CARROLL, WARDEN )  
Respondant )

MEMORANDUM OF LAW IN SUPPORT OF  
PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S OPENING BRIEF

07 - 421



6-26-07  
DATE

Isaias R. Ortiz  
Isaias R. Ortiz, #00480744  
Del. Corr. Cntr.  
1181 Paddock Rd.  
Smyrna, DE 19977-9679

**ARGUMENTS IN SUPPORT OF**  
**WRIT OF HABEAS CORPUS**

On October 18, 2002, defendant Isaias R. Ortiz was unlawfully detained after a traffic stop in which the officer who made the stop illegally seized a jacket or sweater from Ortiz's vehicle without defendant's consent, probable cause, or a court warrant, thus violating defendant's Constitutional Fourth Amendment Right with an unlawful and unreasonable search and seizure.

The question arises as to whether the officer who made the stop had probable cause to stop and/or search the defendant's vehicle. It is understood that the officer was allegedly reacting on inconclusive information received from an alleged informant, information that was questionable at best, and the officer's actions following the stop of defendant Ortiz was not in accordance to police procedure or constitutional requirements. A stop must be justified at its inception by reasonable suspicion of criminal activity. Terry v. Ohio, 392 U.S. 1 (1968). When defendant Ortiz and his companion left the residence of 1908 Lancaster Avenue, the alleged informant, based upon police testimony was present to witness Ortiz and his female companion exit the Lancaster residence which was a multiple residential building (at least two apartments existed in the building), and yet the supposed informant never once gave any kind of a positive identification of defendant as a suspect or a person of interest, by description, in any illegal activity at this residence, nor did the police (according to documented record), ask the alleged informant to give positive identification of the defendant or

to confirm Ortiz as a suspect of interest to implicate defendant in any illegal activity. Therefore, without any true means to tie defendant Ortiz to any illegal activity at any of the residences of 1908 Lancaster Avenue, there is serious question as to whether the stop of Ortiz, questioning and the search of defendant's vehicle was supported by reasonable and articulate suspicion. Robertson v. State, 596 A.2d 1345 (Del. Supr. 1991).

As described in Caldwell v. State, 780 A.2d 1037 (Del. Supr. 2001); after an officer effectuates a lawful investigative stop supported by reasonable suspicion, the officer has an absolute right to conduct a limited search of the suspect for any weapons if the officer has a reasonable belief that the suspect is presently armed and dangerous. However, the facts of defendant Ortiz's case do not support a finding under Caldwell. Whereas the officer had no true understanding of Ortiz's involvement if any, in any unlawful activity, and furthermore had no information or confirmed suspicions to conclude that defendant Ortiz was armed or dangerous.

As previously described, defendant Ortiz was stopped by Detective Rodriquez without probable cause or a search warrant, and after causing Ortiz and his companion to exit his vehicle and learning that the defendant had no proof of identification on his person, detective Rodriquez took it upon himself without consent from defendant Ortiz to reach into defendant's vehicle to remove a jacket or sweater that was in the rear seat of the defendant's vehicle. The United States Constitutional Fourth Amendment states that the people have the right to be secure against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. This right of defendant Ortiz's was violated as is evident by the facts of this case and shows that Ortiz's conviction was in fact tainted by violations of his constitutional rights which gives cause to invoke the protection of the Superior Court Rule 61. Jones v. Anderson, 54 Del. 587, 183 A.2d 177 (1962).

Consequently, the unwarranted and illegal search of defendant Ortiz's vehicle lead to the arrest of Ortiz and his companion as a substance described as crack cocaine was found in the jacket or sweater which was unlawfully seized from the vehicle, and the finding of a set of keys subsequently led officers to the residence of 1933 West Fourth Street where additional drugs were found and seized. The lack of information to properly identify Ortiz as a person of interest in any unlawful activity at the 1908 Lancaster Avenue residence suggests that the police, without the illegal search of defendant's vehicle and the unlawful seizing of the jacket or sweater from the vehicle where a set of keys to another residence were seized, would not have been able to secure a warrant for the search of the 1933 West Fourth Street residence.

Probable cause permits the warrantless search and seizure of a vehicle and its occupants and exists if the facts known before the search and seizure would justify the issuance of a search warrant. This was not so in Ortiz's case. Harris v. State, 806 A.2d 119 (Del. Supr. 2002); Maryland v. Dyson, 527 U.S. 465 (1999).

The subsequent search of the residence at 1933 West Fourth Street was a result of the unlawful search and seizure of the jacket/sweater found in defendant Ortiz's vehicle before Ortiz was ever put into custody because immediately following the stop the officer had no probable cause to arrest Ortiz. Therefore, all evidence obtained as a result of the unlawful search and seizure must be suppressed because of violations to defendant's rights. Terry v Ohio, 392 U.S. 1 (1968). Const. Amend. 4, 11Del. C. § 1902, §1903.

The United States Constitutional Fifth Amendment states that: No person ..... shall be compelled in any criminal case to be a witness against himself. Thus the trial judge, Charles H. Toliver abused his discretion in denying a continuance request by defendant to allow an interpreter to be present during trial on behalf of defendant Ortiz so that the defendant could fully understand what legal actions were being taken against him and to give him an opportunity to properly and adequately respond via an interpreter if necessary.

On the day of his trial, September 30, 2003, defendant Ortiz, who is a National of the Dominican Republic indicated to the court that he wished to have his case continued so that he could secure a 'Spanish Interpreter', (Appendix A; Pg.5).

Ortiz's argument was that although he could speak and understand some or little of the English language, his comprehension of the legal jargon and the terminology's used in the court of law were too much for him to know what

was really being said during his trial hearing. A criminal defendant who is unable to understand the English language is effectively denied the right to consult with an attorney, to confront his/her accusers and/or waive constitutional rights knowingly, intelligently, and voluntarily. United States v Cirrincione, 780 F.2d

620 (7<sup>th</sup> Cir. 1988). Id at 634; the Court held that a defendant is denied Due Process when:

1. What is told him is incomprehensible.
2. The accuracy and scope of the translation at a hearing or trial is subject to grave doubt.
3. The nature of the proceedings is not explained to him in a manner designed to insure his full comprehension.
4. A credible claim of incapacity to understand due to language difficulty is made and the Court fails to review the evidence and make appropriate findings of facts.

Prior to or during the trial hearing, defendant Ortiz's counsel informed the court of Ortiz's request for a translator as is documented in the trial transcript on page 5 of Appendix A attached. But instead of the trial judge granting Ortiz's request for an interpreter, the trial judge proceeded to question Ortiz to the point of intimidation (Appendix A; Pg. 7-52), and then the trial judge makes a decision at defendant Ortiz's expense.

It is clearly evident by the defendant's responses to the judge's questioning that total comprehension was absent on the part of defendant Ortiz. The

attorney for Ortiz, Anthony Figliola also made a statement during the trial hearing (Appendix A; Pg. 26, Ln. 15-17) which leaves to question the issue of his clients state of comprehension of the English language and more so Ortiz's understanding of the legal terms used by the court. Ortiz also stated that most of his letters and correspondence to his attorney were assisted by someone else who could better articulate what he was meaning to say to his counsel because he could not do so on his own. By necessary implication, before reaching a final decision as to sentencing, the sentencing judge must have an open mind at least to the extent of receiving all information bearing on the question of mitigation.

Siple v State, Del. Supr., 701 A.2d 79 (1997). Del. Supr. Rule 32.

It is clear that Ortiz lacked critical understanding of most of the questions from judge Toliver by his responses. And the United States Constitutional Fifth Amendment is supposed to protect a person from being 'compelled in any criminal case to be a witness against himself'. It was an abuse of discretion to deny defendant Ortiz his request for a continuance to secure an interpreter and a direct violation of Ortiz's right of the 'Equal Protection of the Laws'. U.S. Const. Amend. 5, 14.

As for the timetable to which defendant Ortiz is now submitting his petition for Writ of Habeas Corpus, the one year following sentencing which was on December 19, 2003 should be tolled being as Ortiz did the following:

- 1.)Appealed his conviction on August 31, 2004.  
(Denied – November 16, 2004).

- 2.) Filed motion for Post Conviction Relief on August 22, 2006 for constitutional violations.  
(Denied – September 15, 2006).

After exhausting all State remedies, defendant Ortiz now seeks relief from this Honorable United States District Court of Delaware.

**TRANSCRIPT  
OF  
TRIAL HEARING  
SEPTEMBER 30, 2003**

**APPENDIX A**

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

V

ID. No. 0210012072

ISAIAS RIVERA ORTIZ, and  
NEMENSIO RIVERA,

ID No. 0210012080

Defendants.

Tuesday, September 30, 2003

BEFORE: HON. CHARLES H. TOLIVER, IV, J  
AND A JURY

APPEARANCES:

DEPARTMENT OF JUSTICE  
BY: CYNTHIA KELSEY, ESQ., AND  
RENEE HRIVNAK  
On behalf of the State

ANTHONY A. FIGLIOLA, ESQ.  
On behalf of the Defendant Ortiz

CHRISTOPHER TEASE, ESQ.  
On behalf of the Defendant Rivera

ALSO PRESENT: Grettel Huber, Interpreter

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Trial

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SUPERIOR COURT REPORTERS  
500 N. King Street, Suite 2609  
Wilmington, Delaware 19801-3725  
(302) 255-0562

LYNNE BELL COALE, Registered Merit Reporter  
Official Court Reporter

COPY

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE  
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Trial

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SUPERIOR COURT REPORTERS  
500 N. King Street, Suite 2609  
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(302) 255-0562

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1 (Courtroom 4C)

2

3 THE COURT: Sorry about the delay. Your  
4 client is not amenable to resolving this matter,  
5 otherwise?

6 MR. TEASE: Your Honor, I don't know if  
7 I've gotten a formal plea offer. I think it might be  
8 trafficking, where he would be looking at 20 years as  
9 a fourth-time felony offender. But I haven't  
10 formally gotten a plea offer, and I would doubt the  
11 client would take that, anyway.

12 THE COURT: We'll go through the colloquy  
13 with each, make sure they understand.

14 Is the State offering 18 or 20?

15 MS. KELSEY: I had offered trafficking  
16 five to 50, and conspiracy second.

17 MR. TEASE: That would be what, 28 years?

18 MS. KELSEY: Well, it's three years  
19 min/man.

20 MR. TEASE: But, then, habitual offender  
21 status.

22 MS. KELSEY: Well, it's a drug offense,  
23 so the maximum isn't the minimum.

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1 MR. TEASE: So, it would be three to  
2 life?

3 MS. KELSEY: Yeah, three to life. And  
4 the conspiracy second is a Title -- well, maximum of  
5 two, anyway, but it's not a violent felony.

6 MR. TEASE: Your Honor, I'm sorry about  
7 that.

8 THE COURT: In terms of what?

9 MR. TEASE: Of not knowing that the drug  
10 offense apparently carries a three under the  
11 habitual -- minimum of three.

12 THE COURT: I was getting destroyed. I  
13 mean, well, I was -- we didn't know but, we know now.  
14 But anyway, if that's the deal, that will only take a  
15 couple seconds to tell him that, that he -- it  
16 depends. Mr. Figliola's client was offered eight.  
17 And yours is a discretionary sentence.

18 (Kelsey and Tease conferring.)

19 MS. KELSEY: Yeah, a Title 11 violent  
20 felony. Here it is.

21 THE COURT: Miss Kelsey, are they both  
22 going to sit with you.

23 MS. KELSEY: No, just Miss Hrvnak.

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10 EXHIBITS

11 (NONE MARKED)

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1 MR. TEASE: I think it might be helpful  
 2 if myself and Miss Huber go back and talk to Mr.  
 3 Rivera for a few minutes before we come in.

4 THE COURT: Mr. Figliola, I can go  
 5 through the colloquy with your client and shorten  
 6 that part of the process.

7 MR. FIGLIOLA: Sure. Let me explain it  
 8 to him.

9 (Mr. Figliola and client conferring.)

10 MR. FIGLIOLA: Thank you, your Honor.  
 11 We're prepared to go forward on that. Go to the  
 12 podium.

13 Now you need a translator? -

14 (Your Honor, he just informed me he needs  
 15 a translator.)

16 THE COURT: Have you had any problem  
 17 communicating any concepts or any language difficulty  
 18 with this defendant?

19 - MR. FIGLIOLA: No, your Honor. And we  
 20 had a -- we went through a preliminary hearing and a  
 21 suppression hearing, both without an interpreter. -

22 THE COURT: And how long have you been  
 23 assigned to this case?

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1 MR. FIGLIOLA: Preliminary hearing was  
 2 last October.

3 THE COURT: Of 2002?

4 MR. FIGLIOLA: Yes.

5 THE COURT: And have you been to see --  
 6 what's this defendant's name?

7 MR. FIGLIOLA: Mr. Ortiz, your Honor. I  
 8 spoke with Mr. Ortiz probably on at least four  
 9 occasions. And he's written me letters, and I've  
 10 written him letters in English, yes, your Honor.

11 THE COURT: His letters to you were in  
 12 English and your letters to him were in English?

13 MR. FIGLIOLA: Yes, your Honor.

14 - THE COURT: Mr. Ortiz, for the record,  
 15 you wish to state your full name and address? -

16 (MR. ORTIZ: M -- yeah, I can understand  
 17 but I cannot speak too much.)

18 THE COURT: Mr. Ortiz, I've been on the  
 19 bench 13 and a half years.

20 MR. ORTIZ: Mm-hmm.

21 THE COURT: And this is a significant  
 22 trial. And if an attorney who's a member of the bar  
 23 who I've been professionally acquainted with for that

1 entire period of time is telling me that you've  
 2 written him letters in English, you've communicated  
 3 with him in English, now approximately one year  
 4 later, 10 months since -- well, a year later since he  
 5 was appointed to represent you, for the first time,  
 6 you state you need an interpreter.

7 Now, you want to explain to me -- I ask  
 8 him to submit Court exhibits, copies of  
 9 correspondence he's received from you. I'm about to  
 10 call as witnesses Corrections officers who have  
 11 monitored your stay or custody at Gander Hill and  
 12 wherever else you've been, and, then, we're going to  
 13 proceed from there. Now -- plus I will also call on  
 14 inmates, just to let you know. (INTERMISSION)

15 (MR. ORTIZ: Yeah, I wrote that letter to  
 16 him, but somebody wrote the letter for me.)

17 THE COURT: That's all right. We have  
 18 handwriting analysis, and I'll also submit it to  
 19 somebody for that. You tell me who the inmate is and  
 20 I'll ask that inmate did he, in fact, write it for  
 21 you.

22 THE DEFENDANT: He went home already.

23 THE COURT: Well, if you tell me his

1 name, I'll find him. I have excellent resources in  
 2 the community, excellent.

3 MR. ORTIZ: Brown something, Brown.

4 THE COURT: I'm sorry?

5 THE DEFENDANT: He name is Brown.

6 THE COURT: Okay. Do you remember a  
 7 first name?

8 THE DEFENDANT: No, he was my cellie, you  
 9 know.

10 THE COURT: So, we can check the  
 11 assignments to your cell, because they have records  
 12 of that.

13 MR. ORTIZ: Yes, your Honor.

14 THE COURT: What pod are you on?

15 MR. ORTIZ: Say what?

16 THE COURT: What pod are you on?

17 MR. ORTIZ: Okay. 2G.

18 THE COURT: 2G? How long have you been  
 19 on 2G?

20 MR. ORTIZ: Like, almost a year.

21 THE COURT: Then, I'll find out who --  
 22 bring the officer over, any officer who's been on 2G,  
 23 and we'll find out if you have any difficulty

STATE V. ORTIZ AND RIVERA

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1 speaking English.

2 Now, who was the preliminary hearing in  
3 front of, Mr. Figliola? Do you remember?

4 MR. FIGLIOLA: I'll look at my notes,  
5 your Honor. I can't recall, the preliminary hearing,  
6 which judge it was, your Honor.

7 THE COURT: Let me ask you this.

8 MR. FIGLIOLA: It was -- I can give you  
9 the date of the preliminary hearing. I don't have  
10 the date written down in my -- he was arrested on  
11 October 18, 2002, so it would have been probably a  
12 week later. The suppression hearing -- oh, I'm  
13 sorry, here it is. I do have the date. *I do had interpret*  
14 October 31, 2002, was the preliminary <sup>that</sup> *day*  
15 hearing. And the suppression hearing was in front of  
16 Judge DelPesco, and I don't have the exact date on my  
17 notes. Sorry, I do. February 28, 2003.

18 ~ THE COURT: Okay. Now, for the record,  
19 Mr. Ortiz, state your full name and address. ~

20 (MR. ORTIZ: Okay. 703 North Monroe.)

21 THE COURT: North Monroe. And how long  
22 did you live there?

23 MR. ORTIZ: It's, like, almost two years.

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1 THE COURT: Okay. And did you live there  
2 alone?

3 MR. ORTIZ: Almost.

4 THE COURT: Did you live there alone.

5 MR. ORTIZ: No, with my wife.

6 THE COURT: And what's your wife's name?

7 Is that the 16-year-old?

8 Send her to bring that young girl in  
9 here, please.

10 MS. KELSEY: Your Honor, I took her down  
11 to the witness room.

12 THE COURT: Send for her. We'll bring  
13 her up, too. We want to establish whether he can or  
14 cannot speak English.

15 MS. KELSEY: Your Honor, if you're going  
16 to ask questions of the defendant, I wanted to ask  
17 that you swear the defendant so that --

18 THE COURT: It's not going to matter,  
19 Miss Kelsey.

20 MS. KELSEY: It might be the basis of  
21 new --

22 THE COURT: Perjury is the least of his  
23 problems.

1 MS. KELSEY: May I use the Court's phone  
2 to call.

3 THE COURT: Sure. And she had another  
4 lady with her. Was it her mother?

5 MS. KELSEY: Yes, your Honor.

6 THE COURT: Well, bring her up, too.

7 See, I'm kind of funny, Mr. Ortiz, about  
8 people who are not candid with me. And let me  
9 explain to you something about how, I'm kind of funny  
10 about certain things, and I expect people to be at  
11 least up front with me. And there is a provision of  
12 Delaware law known as 11 Delaware Code Section 1271,  
13 which deals with contempts, when people are  
14 disruptive or intend to interfere with the orderly  
15 processes of the Court. That doesn't mean simply if  
16 you jump up and down and throw things and disrupt it.  
17 If you attempt to intentionally interfere, then I am  
18 entitled to summarily impose up to six months  
19 punishment.

20 The interesting twist on that, under, I  
21 think it's 3201 of 11 Delaware Code, which I'll find  
22 for you, it deals with conditions of confinement.  
23 And it also allows the Court to impose, I think it's

1 up to three months of solitary confinement. The  
2 interesting provision of doing that -- it's not meant  
3 to prohibit anyone from exercising their rights, but  
4 sometimes people don't understand, when they say or  
5 do things and they don't take matters seriously, that  
6 there are serious consequences which are immediate  
7 and don't depend upon the resolution of the trial.

8 Now, I'm going to ask you person to  
9 person now. Are you honestly telling me that, after  
10 a preliminary hearing, after being arrested, being in  
11 prison and talking with your attorney and never  
12 having asked for a translator, that you now have some  
13 difficulty understanding English? Before I call  
14 these officers in, before I bring this lady up here,  
15 the young lady and her mother, and ask them  
16 questions, now, I'm going to ask you straight up, is  
17 that what you're telling me? Because it doesn't seem  
18 that that has been the case.

19 Now, I'm also going to bring in a couple  
20 Corrections' officers just to complete the record.  
21 And I'm not going to hold up trial. I'll do that at  
22 lunchtime. So, we want to go forward, unless I feel  
23 that there is an issue that we need to discuss.

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1 Now, Mr. Figliola has already said he 2 hasn't had any problem talking to you, and this is 3 the first time in a year he's heard this. So, you 4 want to tell me now or rethink your position? You 5 don't have to. I just want to make sure, before I go 6 to this effort, that we don't have any 7 misunderstanding, because I may have misunderstood.	1 BY THE COURT: 2 Q What is your name, name? 3 A Solmori. 4 Q Ma'am, I'm Judge Toliver. I'm the 5 individual who's going to be presiding over this 6 case. And a question has come up, and I want to make 7 sure we take the necessary precautions.
8 ( MR. ORTIZ: Yeah, I tell you, I can 9 understand, but I cannot speak too much.)	8 Where were you born? 9 A Puerto Rico. 10 Q And how long have you been in this state? 11 A Eleven years. 12 Q And how old are you? 13 A Seventeen. 14 Q And your date of birth? 15 A 10/18/86. 16 Q Have you had any difficulty reading or 17 writing English? 18 A No. 19 Q Do you have any difficulty speaking 20 English? 21 A No. 22 Q How long have you known the defendant, 23 Mr. Ortiz?
15 THE COURT: Well, since there hasn't been 16 an issue of you taking the stand, we don't have any 17 problem at this point. But I'll tell you, you have a 18 seat, we're going to conduct a little colloquy there. 19 What's the mother's name? 20 MS. KELSEY: I gave the clerk my -- 21 THE COURT: Ma'am, your name, please? 22 MS. KELSEY: Ayala, Maria. 23 MRS. AYALA: My name? THE COURT: Do you have any problem understanding or speaking English? MRS. AYALA: Mother no. THE COURT: Could you come up and take the stand, please?	15 THE COURT: Well, since there hasn't been 16 an issue of you taking the stand, we don't have any 17 problem at this point. But I'll tell you, you have a 18 seat, we're going to conduct a little colloquy there. 19 What's the mother's name? 20 MS. KELSEY: I gave the clerk my -- 21 THE COURT: Ma'am, your name, please? 22 MS. KELSEY: Ayala, Maria. 23 MRS. AYALA: My name? THE COURT: Do you have any problem understanding or speaking English? MRS. AYALA: Mother no. THE COURT: Could you come up and take the stand, please?
1 Swear the witness. State your name, 2 please. 3 MRS. AYALA: Maristella Ayala. I say I 4 no speak English. 5 THE COURT: We'll find out. You don't 6 understand your name, ma'am? 7 MRS. AYALA: Name? 8 THE COURT: I asked you who you were and 9 you told me. 10 MRS. AYALA: I say my name. 11 THE COURT: Do you speak English? 12 MRS. AYALA: No. 13 THE COURT: What do you do for a living? 14 THE CLERK: Work? 15 MRS. AYALA: No. 16 THE COURT: Do you speak English, ma'am? 17 MRS. AYALA: Yes. 18 THE COURT: You can step down. I'll talk 19 to her. 20 SOLMORI TORRES AYALA, 21 called as a witness, being duly sworn, was examined 22 and testified as follows: 23 EXAMINATION	15 THE COURT: Well, since there hasn't been 16 an issue of you taking the stand, we don't have any 17 problem at this point. But I'll tell you, you have a 18 seat, we're going to conduct a little colloquy there. 19 What's the mother's name? 20 MS. KELSEY: I gave the clerk my -- 21 THE COURT: Ma'am, your name, please? 22 MS. KELSEY: Ayala, Maria. 23 MRS. AYALA: My name? THE COURT: Do you have any problem understanding or speaking English? MRS. AYALA: Mother no. THE COURT: Could you come up and take the stand, please?
1 Page 14	Page 16
1 Swear the witness. State your name, 2 please. 3 MRS. AYALA: Maristella Ayala. I say I 4 no speak English. 5 THE COURT: We'll find out. You don't 6 understand your name, ma'am? 7 MRS. AYALA: Name? 8 THE COURT: I asked you who you were and 9 you told me. 10 MRS. AYALA: I say my name. 11 THE COURT: Do you speak English? 12 MRS. AYALA: No. 13 THE COURT: What do you do for a living? 14 THE CLERK: Work? 15 MRS. AYALA: No. 16 THE COURT: Do you speak English, ma'am? 17 MRS. AYALA: Yes. 18 THE COURT: You can step down. I'll talk 19 to her. 20 SOLMORI TORRES AYALA, 21 called as a witness, being duly sworn, was examined 22 and testified as follows: 23 EXAMINATION	1 A A year now. 2 Q A year? Did you and he have some sort of 3 relationship? 4 A What you mean? 5 Q Do you have some sort of -- do you have 6 any sort of relationship? How do you know him? 7 You don't know how you know him? Is he 8 your boyfriend, or was he your boyfriend? 9 A Before I got locked up, I know him for 10 three months. 11 Q Before you got locked up, you knew him 12 for what? 13 A I knew him for about a month. 14 Q When I say how did you know him, were you 15 friends, enemies? Husband and wife? 16 A Just -- he was not my boyfriend. I don't 17 know. 18 Q Do you have a child? Is the child in any 19 way related to him? 20 A Yes. 21 Q How is the child related to him? 22 A That's his father. 23 Q So, you and he have a child together?

<p style="text-align: right;">Page 17</p> <p>1 / A Mm-hmm.</p> <p>2 Q You have to say "Yes" or "no," ma'am. /</p> <p>3 A Yes.</p> <p>4 Q So there was some sort of romantic</p> <p>5 relationship between the two of you; right?</p> <p>6 A Yes.</p> <p>7 Q And that was how long before you had the</p> <p>8 child?</p> <p>9 A A month.</p> <p>10 Q Okay. And have you -- and that was --</p> <p>11 so, the child is how old?</p> <p>12 A He's going to be four months.</p> <p>13 Q Okay. So, that meant, this being</p> <p>14 September, he was born in, like, June?</p> <p>15 A Yes.</p> <p>16 Q So that meant he was conceived sometime</p> <p>17 in September.</p> <p>18 A Yes.</p> <p>19 Q Okay. Now, in the year or so you've</p> <p>20 known the defendant, have you communicated with him</p> <p>21 while he's been incarcerated?</p> <p>22 A No, this is the first time he seen his</p> <p>23 son.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q So, you never talked to him at all in --</p> <p>2 ma'am, you're under oath. I want you to understand,</p> <p>3 you're under oath, and I take that very, very</p> <p>4 seriously. And if I find out otherwise --</p> <p>5 A He can speak a little bit of English, but</p> <p>6 he knows more Spanish.</p> <p>7 Q That's not what I asked you, and I want</p> <p>8 you to be real careful because you're under oath.</p> <p>9 And I want you to look at me and I want you to see</p> <p>10 how serious I am about this.</p> <p>11 A Yes.</p> <p>12 Q So, it's not a game and I'm not playing.</p> <p>13 I'm going to ask you this one more time, and I want a</p> <p>14 clear answer, and I want you to think about me as the</p> <p>15 judge in this Court who's asking you a question under</p> <p>16 oath. So, under penalty of perjury, among other</p> <p>17 things -- now, do you understand what perjury is?</p> <p>18 A No.</p> <p>19 Q I'm sorry?</p> <p>20 A No.</p> <p>21 Q If you do not tell the truth and you're</p> <p>22 later -- under oath, there are criminal penalties</p> <p>23 attended to not telling the truth when you're called</p>
<p style="text-align: right;">Page 18</p> <p>1 Q Have you written him, talked to him,</p> <p>2 spoke with him?</p> <p>3 A No.</p> <p>4 Q You've had no contact with him until</p> <p>5 today?</p> <p>6 A When I go to Court, I see him.</p> <p>7 Q Okay. Did you ever talk to him while you</p> <p>8 were in Court?</p> <p>9 A No.</p> <p>10 Q How did you know to come here today?</p> <p>11 You're a State's witness?</p> <p>12 A They send me letter.</p> <p>13 Q So, from the time you got arrested</p> <p>14 sometime in October until now, you've had no written</p> <p>15 or oral conversation with the defendant?</p> <p>16 A No.</p> <p>17 Q In the month or so you knew him, did you</p> <p>18 have any problem talking to him? In English, I</p> <p>19 meant.</p> <p>20 A What you mean?</p> <p>21 Q Did you speak to him in English, talk to</p> <p>22 him in English?</p> <p>23 A In Spanish.</p>	<p style="text-align: right;">Page 20</p> <p>1 as a witness and sworn. Do you understand that?</p> <p>2 A Yes.</p> <p>3 Q And those penalties include the</p> <p>4 possibility of jail and fines. You understand that?</p> <p>5 A Yes.</p> <p>6 Q And I'm going to ask you again, did you</p> <p>7 converse or were you able to speak to the defendant,</p> <p>8 Mr. Ortiz, in English as well as Spanish?</p> <p>9 A Not as well as Spanish.</p> <p>10 Q Did you speak to him in English, ma'am?</p> <p>11 A Sometimes.</p> <p>12 Q I'm sorry?</p> <p>13 A Sometimes.</p> <p>14 Q Did he seem to have any difficulty</p> <p>15 understanding what you said to him?</p> <p>16 A Sometimes he won't understand something.</p> <p>17 Q Ma'am, I'm serious. I'm real serious.</p> <p>18 That's your testimony.</p> <p>19 So, if I can find some other witness who</p> <p>20 heard you speak to him in English and him responding</p> <p>21 in English, that person would not be telling the</p> <p>22 truth?</p> <p>23 A No.</p>

	Page 21	Page 23
1	Q So, you never -- he didn't understand you	1 A 10/18/86.
2	in English?	2 Q And this was in September?
3	A I would talk to him in English, but he	3 A Mm-hmm.
4	was better off talking to him in Spanish.	4 Q When you were 15?
5	Q But he understood English as well, or did	5 A Mm-hmm.
6	he understand English?	6 THE COURT: Maybe you didn't explain that
7	A I don't know what he understand.	7 to your client, Mr. Figliola.
8	Q Did he have a job?	8 All right, ma'am, that's enough. I've
9	A I don't know. I only knew him --	9 heard all I need to hear. I think two weeks short of
10	Q I'm sorry.	10 her 15th birthday, 16th birthday, which constitutes
11	A I only knew him for that month. He had a	11 an interesting set of events.
12	wife.	12 Sir, you are? Corporal African American?
13	Q Where did you see him?	13 DEPT. OF CORRECTION: Corporal Boyce.
14	A I met him at the Spanish festival last	14 THE COURT: I don't mean any harm, but I
15	year.	15 don't think you're African American. You could be, I
16	MS. KELSEY: Judge, she was living with	16 don't know.
17	him at the time.	17 DEPT. OF CORRECTION: I couldn't tell who
18	BY THE COURT:	18 you were looking at. I'm sorry. And I couldn't
19	Q Did you two ever occupy a household	19 quite hear what you were saying.
20	together?	20 DEPT. OF CORRECTION: We are brothers.
21	A No.	21 THE COURT: You and Danny DeVito and
22	Q I'm sorry?	22 Arnold Schwarzenegger all at one time, huh?
23	A No. He had his girl, living with his	23 You brought the defendant over?
	Page 22	Page 24
1	girl. I was living with --	1 DEPT. OF CORRECTION: No, I didn't. I
2	Q You never occupied the same household	2 just brought him upstairs.
3	with him?	3 THE COURT: Okay. Have you had occasion
4	A No.	4 to talk to him?
5	Q You never spent nights -- what's the	5 DEPT. OF CORRECTION: No.
6	residence?	6 THE COURT: Did you hear him talk to
7	MS. KELSEY: 1913 West Fourth Street,	7 anybody else?
8	Apartment B.	8 DEPT. OF CORRECTION: No, I don't recall.
9	BY THE COURT:	9 THE COURT: Ma'am, you are?
10	Q You never spent nights in an apartment at	10 DEPT. OF CORRECTION: Corporal May
11	1914 West Fourth Street?	11 Glasser (PH).
12	A I would chill with him, I spent some time	12 I brought the defendant from the cell
13	with him. But for sleep, I would go back to my	13 block upstairs. I asked him if he had picked a jury
14	mother's.	14 yet because he was wearing shackles. He said no, he
15	Q You say you would chill with him?	15 had not picked a jury. I asked him to sit down so I
16	A Like, be with him.	16 could remove his shackles before we came upstairs.
17	Q And your testimony, you didn't live	17 He had no problem understanding my directions.
18	there, you didn't have clothing there, and you didn't	18 THE COURT: Did you hear him speak to
19	sleep there?	19 anybody else?
20	A No.	20 DEPT. OF CORRECTION: Just to me, sir.
21	Q I just want to make sure before we bring	21 THE COURT: Thank you, ma'am.
22	in these other witnesses.	22 Officer or Corporal Boyce, did you bring
23	And what is your date of birth?	23 the defendant over, upstairs?

<p style="text-align: right;">Page 25</p> <p>1 DEPT. OF CORRECTION: I just brought him 2 upstairs.</p> <p>3 THE COURT: Did you have occasion to 4 either speak to him or hear him speak?</p> <p>5 DEPT. OF CORRECTION: No.</p> <p>6 THE COURT: Okay. Do you know who 7 brought him over?</p> <p>8 DEPT. OF CORRECTION: He probably came 9 over on the bus this morning.</p> <p>10 THE COURT: All right, thank you.</p> <p>11 While we'll finish the colloquy, I think 12 he can probably understand enough. Take the podium.</p> <p>13 Do you have in your file his letters, 14 Mr. Figliola?</p> <p>15 MR. FIGLIOLA: Your Honor, what I have 16 is, I have a typewritten letter from Mr. Ortiz, a 17 handwritten letter from Mr. Ortiz, and three letters 18 that I sent to Mr. Ortiz.</p> <p>19 THE COURT: May I see them, please?</p> <p>20 There's a letter -- and I'll give them back to you 21 after we make copies -- marked February 7, 2003, from 22 you to Mr. Ortiz, re discovery: "Please enclosed 23 find a copy of the motion to suppress that's been</p>	<p style="text-align: right;">Page 27</p> <p>1 recollection. Mr. Ortiz told me just as we were 2 going through the colloquy, but I do not have a 3 recollection of it, that at one of the hearings, he 4 said -- I guess it would have been a female bailiff 5 interpreted for him. I have no recollection of that. 6 And I'm not sure where it would have been. 7 Certainly, it wouldn't have been at the suppression 8 hearing or the preliminary hearing. I don't know 9 what he is referring to.</p> <p>10 THE COURT: We're going to have to take 11 the baby out of the here, ma'am, please.</p> <p>12 MR. FIGLIOLA: I have no recollection of 13 that, your Honor.</p> <p>14 THE COURT: There appears to be an 15 undated letter which I'll have marked as Court's 16 Exhibit No. 2. It says, "Respectfully speaking, I 17 would like to talk about the -- what the police did 18 on the day of my arrest. Quote, I sat in my friend's 19 car and I never got a chance to do anything. As soon 20 as I got into the car, the police officer put his gun 21 to the window. They never asked me for no type of 22 identification. I have my driver's license here 23 present with me at Gander Hill facility. Also,</p>
<p style="text-align: right;">Page 26</p> <p>1 filed on your behalf. At this time I do not know 2 when it will be held. I've also enclosed a copy of 3 the first plea offer which was extended by the State, 4 refused by us. A copy of the discovery is also 5 enclosed. Respectfully yours." That was dated 6 February 7, 2003.</p> <p>7 Do you know or did Mr. Ortiz ever 8 indicate that he got this letter?</p> <p>9 MR. FIGLIOLA: Your Honor, at the 10 suppression hearing, he indicated that he did have 11 that.</p> <p>12 THE COURT: Did he indicate whether he 13 had the opportunity to review the motion to suppress 14 and the discovery that you sent to him?</p> <p>15 MR. FIGLIOLA: I asked him if he received 16 the package and if he reviewed it. Whether he 17 understood it or not, I can't comment on. But he did 18 receive it. And he acknowledged receiving it.</p> <p>19 THE COURT: At any time between your 20 appointment and -- looks like October -- up to the 21 present, did he in any way indicate he was unable to 22 speak or understand English?</p> <p>23 MR. FIGLIOLA: Your Honor, not to my</p>	<p style="text-align: right;">Page 28</p> <p>1 respectfully speaking, I will fill out a property 2 form and release it to you to show you proof that I 3 have my license on me on the day of my arrest. Thank 4 you for taking the time out to read this letter. God 5 bless you." And then it has Ortiz, Isaias or 6 something. They appear two different kinds of ink, 7 but I don't know.</p> <p>8 The third Court's exhibit letter dated 9 from you November 27, 2002, "I am in receipt of your 10 later dated November 18, 2002. At this point in 11 time, please be advised that, on November 25, 2002, a 12 discovery letter was filed with the State of 13 Delaware. We have not received a reply to that. It 14 is hopeful that we will have sufficient information 15 at your case review so a determination as to whether 16 or not a suppression motion can be made appropriate. 17 At this time I have not reached a determination. 18 Respectfully yours."</p> <p>19 Do you know whether he got this letter?</p> <p>20 MR. FIGLIOLA: Yes, your Honor.</p> <p>21 THE COURT: Did he indicate any 22 difficulty understanding this letter or what you said 23 to him?</p>

<p>1           MR. FIGLIOLA: I don't believe so. I 2 never -- to make the record straight, I never 3 actually said to him, "Did you get my letter of 4 October -- or November 25?" Did you get my letter of 5 November 27? We did, however, speak about the 6 circumstances leading to his arrest that night that 7 he addressed in his handwritten letter. Based on 8 what he indicated to me, as well as what we -- what 9 was obtained through discovery, it was deemed 10 appropriate that a suppression motion would be filed. 11 So, that was done, both on what was discovered and 12 what I learned from Mr. Ortiz. So, I have to assume, 13 your Honor, that he did receive my letters.</p> <p>14           THE COURT: Okay. Then, I am -- I have a 15 letter dated November 25, 2002, from you to him, 16 indicating that you had been appointed by the 17 Superior Court to represent him and please get in 18 touch with your office. That's dated November 25. 19           However, on November 18, he wrote to you, 20 or a typewritten letter was sent to you saying, "As 21 you know, you represented me in the above case. We 22 met a couple of weeks ago." So, apparently that 23 predated that.</p>	<p>Page 29</p> <p>1 the Superior Court when the case is transferred to 2 Superior Court. At that point in time, my office 3 sends out the standard letter of representation as 4 well as a discovery letter and a letter to the Public 5 Defender's office, asking for any information that 6 they have been supplied with by the State. That's 7 why the answer to your question is yes, I had met him 8 before the October -- before the November 25 letter 9 got out, but the order from the Superior Court comes 10 after the preliminary hearing.</p> <p>11           THE COURT: So, you had already met with 12 him in Court of Common Pleas?</p> <p>13           MR. FIGLIOLA: Yes, your Honor, and we 14 had a preliminary hearing.</p> <p>15           THE COURT: Approximately how long did 16 that hearing last?</p> <p>17           MR. FIGLIOLA: It was, I believe, just 18 Detective Rodriguez, direct and cross. Probably 19 would have been maybe a 20- or 25-minute hearing.</p> <p>20           THE COURT: Did you meet with him before 21 that hearing?</p> <p>22           MR. FIGLIOLA: Yes.</p> <p>23           THE COURT: Did he have any indication --</p>
<p>1           MR. FIGLIOLA: Right.</p> <p>2           THE COURT: "And at that time, you told 3 me you were planning to meet with the prosecutor and 4 detective. You said that there may be some problems 5 with the manner in which the police seized the 6 evidence, including a lack of probable cause or 7 proper warrants. I am writing to find out whether or 8 not you had a chance to meet with the prosecutor 9 and/or the detective to discuss the status of my 10 case. If you could let me know the status of my case 11 and send any -- it says any but it should be "me," 12 "any relevant discovery materials, I will be 13 grateful. Thank you. Also, if you could advise me 14 when is my next Court date I would appreciate it. 15 Sincerely, and it's typewritten but not signed.</p> <p>16           Did you meet with him a couple weeks 17 before November 18?</p> <p>18           MR. FIGLIOLA: Yes. What happens, 19 your Honor, I represented Mr. Ortiz at his -- 20 appointed by the Court of Common Pleas to represent 21 Mr. Ortiz at his preliminary hearing. What generally 22 happens is, after we represent them at the 23 preliminary hearing, we then receive an order from</p>	<p>Page 30</p> <p>1 give you any indication that he had any difficulty 2 understanding what was testified to at that hearing?</p> <p>3           MR. FIGLIOLA: No, your Honor. In fact, 4 my recollection is that the hearing was postponed a 5 week because the codefendant needed an interpreter.</p> <p>6           THE COURT: Same codefendant that's here?</p> <p>7           MR. FIGLIOLA: I'm not sure if -- it may 8 have been. I'm not sure, because there was 9 another -- there were other codefendants.</p> <p>10           THE COURT: Did he ask or make any 11 requests for a translator at that point?</p> <p>12           MR. FIGLIOLA: No, your Honor. The first 13 time he asked for a translator was this morning.</p> <p>14           THE COURT: And that was here in the 15 courtroom?</p> <p>16           MR. FIGLIOLA: Yes.</p> <p>17           THE COURT: And you talked to him earlier 18 this morning?</p> <p>19           MR. FIGLIOLA: Yes, your Honor.</p> <p>20           THE COURT: And he did not indicate any 21 difficulty understanding or speaking English at that 22 time?</p> <p>23           MR. FIGLIOLA: No, he did not.</p>

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1 THE COURT: All right. That's five  
 2 pieces of correspondence marked as Court exhibits,  
 3 ma'am, and we'll return the -- it's okay if we keep  
 4 the letters, we'll give you copies.

5 MR. FIGLIOLA: That's fine.

6 THE COURT: All right. Mr. Ortiz, where  
 7 were you born?

8 MR. ORTIZ: Puerto Rico.

9 THE COURT: And how long have you lived  
 10 in this country or in this state?

11 MR. ORTIZ: In Delaware?

12 THE COURT: Yes.

13 MR. ORTIZ: Like, for almost two years.

14 THE COURT: And when did you come to the  
 15 continental United States?

16 MR. ORTIZ: It was, like -- like, seven  
 17 years ago.

18 THE COURT: Okay. And how much education  
 19 do you have?

20 MR. ORTIZ: Not much.

21 THE COURT: Okay. Can you quantify that  
 22 for me, please?

23 MR. ORTIZ: Like eight.

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1 the United States, it's a commonwealth. What I'm  
 2 saying, Puerto Rico is a part of the United States,  
 3 so you went back and forth to your country. You  
 4 never left your country.

5 MR. ORTIZ: Yeah, you're right about  
 6 that.

7 THE COURT: People blew up part of  
 8 Congress once because they were fighting over that, I  
 9 think, because it was a -- remember, the Puerto Rico  
 10 nationalists planted a bomb about 40, 50 years ago?

11 So, what did you do for a living?

12 MR. ORTIZ: I work in, like,  
 13 construction.

14 THE COURT: Construction?

15 MR. ORTIZ: Sometimes I give to other  
 16 people.

17 THE COURT: And the last job, when you  
 18 came to Delaware, what did you do for a living?

19 MR. ORTIZ: That's right, I was working.

20 THE COURT: Construction?

21 MR. ORTIZ: Mm-hmm.

22 THE COURT: Who did you work for?

23 MR. ORTIZ: You know, I was working with

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1 THE COURT: You went to the eighth grade?

2 MR. ORTIZ: Eighth grade.

3 THE COURT: And that was in Puerto Rico?

4 MR. ORTIZ: Yeah.

5 THE COURT: When were you born?

6 MR. ORTIZ: 3/34/65.

7 THE COURT: 3/34.

8 MR. ORTIZ: 3/24/65.

9 THE COURT: So that makes you 38?

10 MR. ORTIZ: Yeah, almost.

11 THE COURT: Okay. You've got to be 38  
 12 because your birthday is in March. So, you are 38?

13 MR. ORTIZ: Yep.

14 THE COURT: All right. And what did you  
 15 do for a living? Tell me a little bit about your  
 16 professional background.

17 MR. ORTIZ: I work.

18 THE COURT: Okay. How did you work? Or  
 19 what kind of work did you do?

20 MR. ORTIZ: Hmm. I work like, you know,  
 21 from -- I don't even -- I was like back and forth to  
 22 my country.

23 THE COURT: Well, Puerto Rico is part of

1 my people only for -- when people call up, we go to  
 2 the house.

3 THE COURT: Yeah, I understand, in the  
 4 business you were in, you probably did get calls to  
 5 go to people's houses. But what did you -- I mean,  
 6 you worked for somebody, or worked with somebody.

7 MR. ORTIZ: Yeah, it was somebody.

8 THE COURT: Who was that?

9 MR. ORTIZ: My friend, he -- I don't know  
 10 where he is now.

11 THE COURT: I didn't ask you where he  
 12 was. I just asked you what is his name. I'm about  
 13 to ask you who he was, his name.

14 MR. ORTIZ: Ray, Raymond.

15 THE COURT: Raymond have a last name?

16 MR. ORTIZ: I know him only from Raymond.

17 THE COURT: You only seem to know either  
 18 the last name or the first name. Okay, that's fine.

19 And you and Raymond worked together, you  
 20 build houses?

21 MR. ORTIZ: Mm-hmm.

22 THE COURT: Right?

23 MR. ORTIZ: Mm-hmm.

1 THE COURT: And tell me the house that  
2 you built, or you helped build.

3 MR. ORTIZ: We paint.

4 THE COURT: Tell me the house you  
5 painted.

6 MR. ORTIZ: We -- I can explain to my  
7 Latino.

8 THE COURT: Well, you can tell me the  
9 location.

10 MR. ORTIZ: You want to say that again.

11 THE COURT: Yeah, you want to tell me  
12 where the house was that you painted?

13 MR. ORTIZ: Okay. We work at like, hmm,  
14 New Castle, New Castle.

15 THE COURT: Okay. Where in New Castle?

16 MR. ORTIZ: We go all over.

17 THE COURT: Who paid you?

18 MR. ORTIZ: Who paid me?

19 THE COURT: Yeah.

20 MR. ORTIZ: My friend, Raymond.

21 THE COURT: Oh. You never dealt with the  
22 homeowner yourself, huh?

23 MR. ORTIZ: No.

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1 you wrote, do you remember them, or that are  
2 supposedly from you?

3 THE DEFENDANT: Mm-hmm.

4 THE COURT: Did you write those letters?

5 MR. ORTIZ: No. My friend.

6 THE COURT: This is Brown?

7 MR. ORTIZ: Brown, yeah.

8 THE COURT: I remember Brown. Brown is  
9 in jail, Raymond paints.

10 MR. ORTIZ: He went home.

11 THE COURT: We'll find out where Brown  
12 was. That's real easy to trace. We'll bring Brown  
13 in here, too. I'm sure he'll be real glad to see  
14 you.

15 So, Brown wrote the letter, you didn't  
16 write the letters yourself? Is that a "Yes" or "No"?

17 MR. ORTIZ: Say what? Say it again.

18 THE COURT: Brown wrote the letters for  
19 you?

20 MR. ORTIZ: Yes, sir.

21 THE COURT: Okay. Now, Brown is what  
22 racial identity? Is he black, white?

23 MR. ORTIZ: He is black.

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1 THE COURT: Did he pay Social Security  
2 for you or anything like that?

3 MR. ORTIZ: No.

4 THE COURT: Did you have any benefits,  
5 like health insurance?

6 MR. ORTIZ: No.

7 THE COURT: So, if you got sick, what  
8 happened to you? You never got sick?

9 MR. ORTIZ: No, thank God, no.

10 THE COURT: So, you did painting and  
11 other work like that over two years in the State of  
12 Delaware and, then, you were arrested.

13 Do you remember writing any of these  
14 letters?

15 MR. ORTIZ: Okay. I got, like -- you  
16 know, in Delaware, I got, like, not two years because  
17 I got almost -- he's already -- he said he was in  
18 there for two years but he's been in jail for a year.

19 THE COURT: Okay. So, you worked for a  
20 year before you got arrested and you met the young  
21 lady back there and you have a child by her.

22 MR. ORTIZ: Yes, sir.

23 THE COURT: Okay. So these letters that

1 THE COURT: Okay. And is he Hispanic?

2 MR. ORTIZ: No, black.

3 THE COURT: Well no, no, black refers to  
4 the Negro race, which is one thing. Ethnicity is  
5 like whether you're Hispanic or American or Swedish  
6 or something else. You can be black and be Hispanic  
7 or white and be Hispanic.

8 MR. ORTIZ: Black American.

9 THE COURT: I learned that along the way.

10 Now, so, Mr. Brown, he was not Hispanic;  
11 right?

12 MR. ORTIZ: Mm-hmm.

13 THE COURT: He was just like a regular  
14 person, like me?

15 MR. ORTIZ: Hmm?

16 THE COURT: My color?

17 MR. ORTIZ: Yeah.

18 THE COURT: Now, Mr. Brown speaks  
19 Spanish?

20 THE DEFENDANT: No. But he understands  
21 my English, my broken English.

22 THE COURT: Oh, okay. So, Mr. Brown  
23 didn't speak Spanish, he wasn't Hispanic, but he

<p>1 understood you, he didn't have any problem      2 understanding you; right? Mr. Brown, he was not like      3 a doctor or a lawyer or a judge, was he? Is that no?      4 MR. ORTIZ: Because -- no, he tried --      5 that's right, he tried to understand what I say.      6 THE COURT: And he did a pretty good job      7 because -- let me have those letters again. He did a      8 pretty good job, didn't he?      9 MR. ORTIZ: Mm-hmm.      10 THE COURT: Now, Mr. Brown, you don't      11 know what he did for a living before he got arrested,      12 do you?      13 MR. ORTIZ: Mm-mmm.      14 THE COURT: He never told you what he      15 did?      16 MR. ORTIZ: No.      17 THE COURT: How long was he your cell      18 mate?      19 MR. ORTIZ: Almost about five months.      20 THE COURT: Okay. And, so, Mr. Brown      21 wrote this handwritten letter for you?      22 MR. ORTIZ: Mm-hmm.      23 THE COURT: Is that a yes?</p>	<p>Page 41</p> <p>1 MR. ORTIZ: He's still there.      2 THE COURT: He's probably going to be      3 there for a while.      4 Mr. Brown, who was an African-American,      5 didn't speak Spanish, he understood you, he didn't      6 have any problems; right? So he wasn't a doctor,      7 lawyer, he wasn't -- you don't know how well educated      8 he was. He was just a regular guy? Is that -- you      9 have to answer.      10 MR. ORTIZ: Yes, sir.      11 THE COURT: Okay. I just want to make      12 sure. And have you filed any grievances while you      13 were in prison? Have they mistreated you. Have they      14 mistreated you?      15 MR. ORTIZ: No.      16 THE COURT: So, have you talked to the      17 guards there?      18 MR. ORTIZ: To the police?      19 THE COURT: No, I'm talking about to      20 those guys in blue, any of them.      21 MR. ORTIZ: Oh, yeah, the CO, yeah.      22 THE COURT: Okay. What's your CO's name.      23 Who's your favorite CO over there.</p>
<p>1 MR. ORTIZ: Yes, sir.      2 THE COURT: And Mr. Brown typed this      3 letter for you dated September 8 -- November 18?      4 MR. ORTIZ: No, I think it was in the law      5 library.      6 THE COURT: He did it for you in the      7 library?      8 MR. ORTIZ: It was a fellow, but he speak      9 Spanish.      10 THE COURT: What was the name of the      11 person who did this for you?      12 MR. ORTIZ: I don't know his name because      13 he working over there. He working over there in the      14 law library.      15 THE COURT: Was he black, white?      16 MR. ORTIZ: White.      17 THE COURT: Was he Hispanic? Did he      18 speak Spanish.      19 MR. ORTIZ: He speak Spanish, too, yeah.      20 But I don't know his name.      21 THE COURT: That's all right, we can find      22 that out, because it has to be around November 18.      23 That's pretty easy.</p>	<p>Page 42</p> <p>1 MR. ORTIZ: That's a lot of them.      2 THE COURT: But there's got to be one you      3 like better than others.      4 MR. ORTIZ: Yeah, but I don't got no      5 favorite.      6 THE COURT: You like them all?      7 MR. ORTIZ: Yeah.      8 THE COURT: I understand. Has one been      9 there longer than the other on your pod?      10 MR. ORTIZ: Yeah.      11 THE COURT: And who is he, or she, his      12 name, her name?      13 MR. ORTIZ: Okay. You can say like      14 Ms. Rivera.      15 THE COURT: Okay. Miss Loretta, she      16 doesn't have a last name.      17 MR. ORTIZ: Rivera.      18 THE COURT: Loretta?      19 MR. FIGLIOLA: Rivera, your Honor.      20 THE COURT: Do we know Miss Rivera?      21 That's all right, we'll find her.      22 Anybody else?      23 MR. ORTIZ: There's a lot of them, but I</p>

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1 don't know their names like that.	1 MR. ORTIZ: It was a white dude, yeah.
2 THE COURT: Okay, I can understand that.	2 THE COURT: I don't think he was funny
3 Have you sought any medical attention	3 looking because of his ethnicity, but he was just
4 since you've been over at Gander Hill?	4 funny looking in general, kind of like Alfred E.
5 MR. ORTIZ: Yeah, I was -- yeah, one	5 Newman. Remember him?
6 time.	6 MR. ORTIZ: I don't know his name but I
7 THE COURT: And what was that for?	7 remember him.
8 MR. ORTIZ: For -- they call me because	8 THE COURT: Okay. And he talked to you;
9 they -- they said it like --	9 right?
10 THE COURT: Routine exam?	10 MR. ORTIZ: Yes, sir.
11 MR. ORTIZ: Yeah.	11 THE COURT: You didn't have any problem
12 THE COURT: Okay. Twice?	12 understanding him?
13 MR. ORTIZ: Mm-hmm.	13 MR. ORTIZ: No.
14 THE COURT: Did you have to write	14 THE COURT: And he didn't have any
15 anything or sign anything while you were there?	15 problem understanding you, did he? Do you know, did
16 MR. ORTIZ: Yeah.	16 he seem to say, "Hey, what did you say?"
17 THE COURT: What was that?	17 MR. ORTIZ: Hmm.
18 MR. ORTIZ: It's my name. I sign my name	18 THE COURT: Let me see here.
19 and that's it.	19 All right. Is Raymond Spanish?
20 THE COURT: All right. Anything else you	20 MR. ORTIZ: Yeah.
21 want to tell me about your -- oh, did you meet with	21 THE COURT: Hispanic? Anything else you
22 Mr. Figliola at the first case review and the second	22 want tell me about why you think you need an
23 case review?	23 interpreter now?
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1 MR. ORTIZ: No, not if I try and see her.	1 MR. ORTIZ: Yeah, for the same reason,
2 THE COURT: Mr. Figliola, he's a him. /	2 you know, I cannot speak too much like that.
3 MR. ORTIZ: Oh, yeah.	3 THE COURT: Well, no decision has been
4 THE COURT: At least, I think he is.	4 made whether you're going to take the stand; right?
5 MR. ORTIZ: Yeah.	5 Right, Mr. Figliola?
6 THE COURT: And you had a first case	6 MR. FIGLIOLA: Not at this time,
7 review; right?	7 your Honor.
8 MR. ORTIZ: Yeah.	8 THE COURT: Okay. And you've had no
9 THE COURT: And you understood what the	9 problem communicating with Mr. Figliola up until now,
10 case review was about? Did you talk to Mr. Figliola	10 did you?
11 on that date?	11 THE DEFENDANT: I said, "Let's do it,"
12 MR. ORTIZ: Mm-hmm.	12 like that. If he -- I can call --
13 THE COURT: And he explained to you what	13 THE COURT: Mr. Ortiz, see, I don't think
14 the charges were and what the State's offer was?	14 you understand our respective roles. You don't get
15 MR. ORTIZ: Yes, sir.	15 to tell me what we do. I tell you because I'm the
16 THE COURT: Okay. At the final case	16 judge, and at this point, I have full -- you ever
17 review, did you come before a judge?	17 heard the term plenary, so you understand what I
18 MR. ORTIZ: Yes, sir.	18 mean?
19 THE COURT: Do you remember the final	19 MR. ORTIZ: Yeah, that's why, you know, I
20 case review judge was kind of like -- well, you might	20 don't want to go without somebody to be Spanish,
21 not have seen him stand up -- kind of a tall judge	21 something like that, because I cannot -- I cannot --
22 with brownish hair, kind of funny looking guy with a	22 I cannot tell you what I want to tell you, that's
23 mustache?	23 why.

STATE V. ORTIZ AND RIVERA

Condescnt

1 THE COURT: Well, you don't seem to have  
 2 any problem understanding me. I mentioned quantity,  
 3 I talked about Social Security, I talked about  
 4 benefits, I talked about medical complaints. You  
 5 know, I just used the term a lot of attorneys don't  
 6 follow, and you seemed to be able to understand and  
 7 respond appropriately. You seem to be oriented to  
 8 who you are, where you are, and what you are. You  
 9 seem to understand the difference between one's  
 10 racial identity and one's ethnic identity, because I  
 11 talked to you about those concepts. You seem to be  
 12 fairly conversant. I don't have any problem  
 13 understanding you and you don't seem to have any  
 14 problem understanding me. Interesting, the young  
 15 lady behind you asked had you picked a jury yet  
 16 because they wanted to take the shackles off, and you  
 17 said no, you had no problem understanding that  
 18 concept. You haven't told me where you requested any  
 19 Court have a translator and had any issues that you  
 20 needed a translator for in Gander Hill. You've met  
 21 with Mr. Figliola at least on four, five occasions.  
 22 You haven't had any problems understanding him. And  
 23 you got the discovery, didn't you, and reviewed that

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1 through at least three Court appearances, and you  
 2 don't seem to have any problem understanding what was  
 3 said to you.

4 The discovery materials were in English,  
 5 weren't they, Mr. Figliola?

6 MR. FIGLIOLA: Yes, your Honor.

7 THE COURT: So, it seems to me -- and  
 8 Mr. Brown who translated for you, yeah, Brown --  
 9 yeah, it was Brown was not Spanish speaking, he  
 10 didn't seem to have any problem understanding. I  
 11 also want to make a part of the record, whatever his  
 12 educational background was, I would probably guess,  
 13 although I could be wrong, that it's less than  
 14 college.

15 And I think we're okay. See, sometimes  
 16 people like to make records, and I wanted you to have  
 17 the record -- to make a record.

18 I wanted to make a record. That's why I  
 19 called the young lady. Interesting. What had he  
 20 said about the relationship when it began prior to  
 21 her 16th birthday. But that's really interesting  
 22 from my perspective. But that's not before me and I  
 23 don't want to ask you anything about that because

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1 discovery, right, that Mr. Figliola sent you; right?  
 2 MR. ORTIZ: Say that again.

3 THE COURT: The discovery that the State  
 4 gave Mr. Figliola, you looked at that and you talked  
 5 to him about it; right? You reviewed it?

6 THE DEFENDANT: Well, I didn't understand  
 7 that, no, that part. Yeah.

8 THE COURT: Yeah, I thought you did. All  
 9 right. Well, I'm satisfied and I'll call over there.  
 10 I have find out this Rivera person and have them  
 11 brought over here, as well as somebody else who's  
 12 been over there. And I know a fair number of  
 13 Corrections officers over there, so I'll -- I'll make  
 14 sure somebody comes to supplement the record. But I  
 15 find, Mr. Ortiz, that whatever your problem is with  
 16 understanding and communicating, one, there's been no  
 17 election to take the stand. If we need to bring  
 18 somebody in to translate for you if you decide to  
 19 take the stand, that might be an option. But  
 20 Mr. Figliola will consider that. You don't seem to  
 21 have any problem articulating ideas that are concrete  
 22 and ideas that are philosophical. You don't seem to  
 23 have any problem understanding it. Plus, you've been

1 that might cause issues somewhere else along the  
 2 line.

3 But you don't seem to have any problem  
 4 understanding much of anything. It's kind of funny,  
 5 because I was looking at your defendant and he has  
 6 asked consistently for a translator, and even he was  
 7 laughing at some of the stuff you said. So, it's  
 8 okay, you don't have to get into it just yet. The  
 9 playacting only goes so far. Come on. You think I  
 10 fell off the turnip truck onto the bench yesterday,  
 11 and it's not it. So you've made the record, you made  
 12 the request, and we are going to go forward, as you  
 13 might have guessed. But the record -- and I think  
 14 I'm fairly adept at this, or good at it, in case you  
 15 didn't understand adept. But I think you do. / I  
 16 think I've established a factual record such that,  
 17 upon review, the fact that I have not granted your  
 18 request for a translater at the 11th hour, I think,  
 19 will be sustained. So, if not, we'll just do it  
 20 again, but I'm prepared to take that chance. /

21 Mr. Figliola, is there anything else you  
 22 want to add, do you think I need to add, at least on  
 23 that issue?

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1	/MR. FIGLIOLA: Your Honor, I think it's	1	THE COURT: You're saying Ortiz gave a
2	been covered. I just think, for the record, because	2	statement against your client? The State doesn't
3	my client has indicated that he feels he needs an	3	have it? Do you have it?
4	interpreter, that I would ask for a continuance, I	4	MR. TEASE: I do, your Honor, unless I've
5	think, your Honor. /	5	gotten -- unless it was a different defendant. No,
6	THE COURT: I understand. You don't have	6	it was Mr. Ortiz indicated a purchase was made, I
7	any choice but to ask for it. Miss Kelsey?	7	think, from my client.
8	MS. KELSEY: No, I -- I am unable to	8	THE COURT: You don't have it,
9	supplement the record with whether or not the	9	Miss Kelsey.
10	defendant spoke English or Spanish at the time of his	10	MS. KELSEY: No. I have D1, which would
11	arrest because, well, Detective Rodriguez was the	11	be Miss Ayala says she got a quarter ounce of crack
12	chief investigating officer and he doesn't speak	12	from D4, who is Daniel Farmer.
13	Spanish. Detective Silva was there and he does speak	13	THE COURT: Okay. You don't have any
14	Spanish, so I don't know if -- will or will not be	14	statement to introduce, so we don't have any Bruton
15	able to supplement the record.	15	problem.
16	THE COURT: Is the State -- does the	16	MR. TEASE: I understand. If that's the
17	State concur with Mr. Figliola's request for --	17	case, that's good.
18	MS. KELSEY: No, I believe the Court has	18	THE COURT: You don't have any basis to
19	made an adequate record.	19	request a continuance; right?
20	THE COURT: I mean, but do you -- are you	20	MR. TEASE: Well, I mean, if the Court
21	agreeing to a continuance?	21	would allow it, I'd like my objection to stand just
22	MS. KELSEY: No. No.	22	because --
23	THE COURT: Okay. Mr. Tease, I don't	23	THE COURT: I don't mind it standing. I
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1	I know if you have a dog in this.	1	I just want to understand it. There's got to be some
2	MR. TEASE: I don't think much of what	2	legal basis for it.
3	your Honor, just to again put on the record, not	3	MR. TEASE: Well, it's speculation, that
4	again but to put on the record, I guess, our	4	somehow it affects what Mr. Ortiz decides to do at --
5	objection to going forward. Suppose something could	5	you know, I can't even imagine what the circumstances
6	come up at trial that would possibly affect my	6	could be, your Honor. But that's --
7	client's case. I don't know that that's going to	7	THE COURT: That's what I'm trying to
8	happen, but there's that possibility. So, we can go	8	figure out. You represent Mr. Rivera; right?
9	ahead and put that objection on the record.	9	MR. TEASE: Yes, sir.
10	THE COURT: Your objection is going	10	THE COURT: So, if Ortiz takes the stand,
11	forward without a translator for Mr. Ortiz?	11	there's no problem. And since there's no statement
12	MR. TEASE: No, and the theory is sort of	12	from Ortiz against Rivera, I don't understand how you
13	attenuated, your Honor. If he doesn't understand	13	would want a continuance. I'll sever your guy if you
14	what's going on, it may affect, you know, his	14	want. But, I mean, I'm not sure -- are you asking
15	decision to take the stand, to not take the stand.	15	for a severance?
16	And if so, that could --	16	MR. TEASE: No, I wasn't getting that
17	THE COURT: Were any statements given?	17	far, your Honor.
18	MR. ORTIZ: He did give a statement	18	THE COURT: Then, I can't understand why
19	implicating my client.	19	you would ask or join in Mr. Figliola's request for a
20	THE COURT: Is the State going to attempt	20	continuance. A severance would cure whatever problem
21	to introduce that?	21	there is for you. I mean, but I don't know what
22	MS. KELSEY: It's news to me.	22	problem there is. I mean, I can't -- because he
23	MR. TEASE: Which is fine.	23	doesn't have a translator, is there a common defense

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1 in which case they could use yours?	1 what the State's offer was?
2 MR. TEASE: No, sir, no. They're pretty	2 MR. ORTIZ: Yes, sir.
3 unrelated, actually.	3 THE COURT: All right. Do you need any
4 THE COURT: Okay. So, if there's no	4 additional time to discuss that matter with
5 basis for severance, I don't know that there's any	5 Mr. Figliola?
6 basis for your client to ask for a continuance	6 MR. ORTIZ: No, I'm all right.
7 because he doesn't have a translator, particularly if	7 THE COURT: Okay. And what was your
8 they're defenses are unrelated.	8 decision on the State's plea offer?
9 MR. TEASE: Yeah, I understand what	9 MR. ORTIZ: Say no.
10 you're saying, your Honor. Again, I admit, it's	10 THE COURT: Okay. Have you had any drugs
11 speculative. I cannot predict.	11 and/or alcohol within the last 48 hours?
12 THE COURT: Speculative, Mr. Tease, is	12 THE DEFENDANT: Who, me?
13 putting it politely.	13 THE COURT: I wasn't asking him.
14 MR. TEASE: I would hate for it to come	14 MR. ORTIZ: No.
15 up later after trial.	15 THE COURT: Are you now, or have you been
16 THE COURT: I note that you've made it,	16 within the past two years, a patient in a mental
17 and I also note that I don't see any basis for it.	17 institution or under the care of a psychiatrist or
18 You aren't able to articulate any, but it's there and	18 psychologist?
19 should I be found wrong, you can pile on with	19 MR. ORTIZ: No, sir.
20 Mr. Figliola.	20 THE COURT: You never had any mental
21 MR. TEASE: Yes, sir.	21 problems or emotional issues; right?
22 THE COURT: All right. Now, Mr. Ortiz,	22 MR. ORTIZ: No, sir.
23 the State has offered you a plea of guilt for up to	23 THE COURT: I mean, there's nothing to
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1 eight years in prison. Was that what it is,	1 suggest it. I just have to ask the question.
2 Miss Kelsey?	2 MR. ORTIZ: Mm-hmm.
3 MS. KELSEY: Yes.	3 THE COURT: Mr. Figliola, is there any
4 THE COURT: Did you understand that,	4 indication but that he understood the State's plea
5 Mr. Ortiz?	5 offer?
6 MR. ORTIZ: Yeah.	6 MR. FIGLIOLA: Your Honor, I went over it
7 THE COURT: Have you had an opportunity	7 with Mr. Ortiz. I explained to him that we lost the
8 to review the document that Mr. Figliola has which	8 suppression hearing, that the State's evidence
9 sets forth the plea agreement?	9 probably will result in a conviction, that he will
10 MR. ORTIZ: Yeah, I see it.	10 probably get a minimum mandatory 18 years in jail.
11 THE COURT: You already reviewed it. Did	11 And even though the State's offer to eight years in
12 you have any problems understanding what the terms of	12 jail, eight years minimum mandatory in jail, is a
13 the plea agreement were?	13 stiff penalty, it's much better than 18 years in
14 MR. ORTIZ: Yeah, I understand that.	14 jail.
15 THE COURT: Okay. Did you have the	15 THE COURT: Well, that's the minimum.
16 opportunity to fully discuss the matter, whether you	16 MR. FIGLIOLA: That's the minimum.
17 should or should not enter a guilty plea, with	17 THE COURT: That's if there were nothing
18 Mr. Figliola? You have the opportunity to discuss it	18 else. And the judge is not bound by the minimum;
19 the with him, Mr. Figliola, your attorney?	19 right?
20 MR. ORTIZ: Yeah.	20 MR. FIGLIOLA: That's correct,
21 THE COURT: You have to respond verbally.	21 your Honor.
22 MR. ORTIZ: Yep.	22 THE COURT: Okay. So, the range was from
23 THE COURT: Okay. Did you understand	23 18 to what?

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1	MR. FIGLIOLA: Eighteen to 40.	1 MR. ORTIZ: No, sir.
2	THE COURT: I thought it was more than	2 THE COURT: And you're electing to go to
3	that.	3 trial and reject the State's plea offer of eight
4	MR. FIGLIOLA: It's 20 on --	4 years of your own free will?
5	THE COURT: On each trafficking.	5 MR. ORTIZ: Yeah, I'd like to go to
6	MR. FIGLIOLA: On each trafficking is 20,	6 trial.
7	that's correct, your Honor. Right, because he's got	7 THE COURT: Yes, I want to make sure. I
8	two possessions with intent to deliver.	8 have to make the record.
9	THE COURT: So, that's another 20, 10 on	9 All right. I think, both, that he
10	each, a vehicle, zero to five, so we're up to 65. We	10 understands the plea offer, that he understands and
11	got two dwellings -- I mean, a dwelling and a	11 can speak English, and I think we're prepared to go
12	vehicle, so that's 70. A conspiracy.	12 forward. And we'll send for the jury panel and we'll
13	MR. FIGLIOLA: It's 72.	13 go ahead and go with it. And to the extent the
14	THE COURT: Oh, no. Wait a minute, is	14 record is not complete, then I can live with that.
15	there three? Three use of a dwellings or vehicles.	15 Now, send -- where's bailiff? Send for
16	So, that's 75. Plus, we got a conspiracy second,	16 the jury panel. I have to do the colloquy with the
17	which is zero to three which is -- is it zero to	17 other defendant.
18	three or zero to two?	18 Fellows, you should understand I
19	MR. FIGLIOLA: Zero to three, your Honor.	19 understand a little bit of Spanish. And I hear very
20	THE COURT: So, that's 77.	20 well, as the attorneys will tell you. And the part
21	MR. FIGLIOLA: The endangering the	21 of Spanish I do understand basically probably has to
22	welfare of a minor.	22 do with some of the more negative phrases. So, I'm
23	THE COURT: We got a tampering, I think	23 just saying, like I tell attorneys, be careful what
	Page 62	Page 64
1	that's zero to two as well. So, we're up to 79.	1 you say. I also read lips a little bit, too. It's
2	Endangering is a misdemeanor. Yeah, I think	2 an occupational acquisition.
3	that's -- that's 80. And resisting arrest is another	3 All right. For the record, would you
4	year. So, that's 81. And possession of drug	4 have Mr. Rivera state his full name and address.
5	paraphernalia, 82.	5 MR. RIVERA: 233 Broom Street.
6	So, I think Mr. Ortiz faces a minimum of	6 THE COURT: Okay. And how old is
7	18 years and a maximum of what I count of 82 years.	7 Mr. Rivera?
8	MR. FIGLIOLA: Eighty-two.	8 MR. RIVERA: 49.
9	THE COURT: Do you understand that,	9 THE COURT: He ought to let you respond
10	Mr. Ortiz?	10 before he starts to answer. I mean, I know he
11	MR. ORTIZ: Yes, sir.	11 understands a little bit.
12	THE COURT: Okay. That's if you're	12 And how much education does he have?
13	convicted on all counts. And I say I don't know what	13 MR. RIVERA: In what?
14	the evidence is so I don't know.	14 THE COURT: In school.
15	And you discussed that with him,	15 MR. RIVERA: Seventh grade, not too much.
16	Mr. Figliola?	16 THE COURT: Apparently, State has made a
17	MR. FIGLIOLA: Yes, I have, your Honor.	17 plea offer, and I gather Miss Kelsey, it's habitual
18	And at the final case review, the same explanation	18 offender, A section status.
19	was given to him from the bench.	19 MS. KELSEY: Yes, your Honor.
20	THE COURT: Okay. I'm satisfied that he	20 THE COURT: It's trafficking and
21	understands the State's plea offer and that it's --	21 conspiracy second. Only one of them would be habit
22	nobody's forcing you to go to trial, are they,	22 offender.
23	Mr. Ortiz?	23 MS. KELSEY: Right. It would be on the

<p>1 trafficking.</p> <p>2 THE COURT: And he would be facing three</p> <p>3 to life?</p> <p>4 MS. KELSEY: Yes.</p> <p>5 THE COURT: And what would be the State's</p> <p>6 sentencing recommendation?</p> <p>7 MS. KELSEY: It depends on his record,</p> <p>8 and it depends on whether or not he decides he wants</p> <p>9 to talk to Detective Rodriguez and what he has to</p> <p>10 say.</p> <p>11 THE COURT: If he did all that, is there</p> <p>12 a recommendation, or is that just depends?</p> <p>13 MS. KELSEY: I -- I can't -- I haven't</p> <p>14 heard what he would say.</p> <p>15 THE COURT: Okay. I just didn't know.</p> <p>16 MS. KELSEY: I can't evaluate it in a</p> <p>17 vacuum.</p> <p>18 THE COURT: Okay. Before I ask the next</p> <p>19 question, what did Mr. Rivera do for a living?</p> <p>20 MR. RIVERA: Where, outside? I work in a</p> <p>21 car wash, cleaning cars.</p> <p>22 THE COURT: And how long have you been in</p> <p>23 the State of Delaware when he was arrested?</p>	<p>Page 65</p> <p>1 THE COURT: Has he been in the Superior</p> <p>2 Court before?</p> <p>3 MR. TEASE: Yes, sir.</p> <p>4 THE COURT: For what?</p> <p>5 MR. TEASE: Assault second in 1999,</p> <p>6 unlawful sexual contact second in '89. I'm not sure</p> <p>7 if that's Delaware or not. That's Delaware.</p> <p>8 Apparently, escape second in 1992.</p> <p>9 THE COURT: All right. Do you understand</p> <p>10 what a plea offer is, Mr. Rivera?</p> <p>11 MR. RIVERA: No, I do not know what that</p> <p>12 means.</p> <p>13 THE COURT: It is an offer made by the</p> <p>14 State to allow you to enter a plea of guilty to less</p> <p>15 than all the charges in the indictment, in exchange</p> <p>16 for a lesser sentence than if you went to trial and</p> <p>17 were found guilty on all the charges. Now, do you</p> <p>18 understand?</p> <p>19 MR. RIVERA: What charges are you talking</p> <p>20 about?</p> <p>21 THE COURT: Trafficking and conspiracy in</p> <p>22 the second degree.</p> <p>23 MR. RIVERA: You just said what?</p>
<p>1 MR. RIVERA: Since 1989, and I've been</p> <p>2 living in Delaware 12 years.</p> <p>3 THE COURT: Okay.</p> <p>4 MR. TEASE: He's asking me, your Honor,</p> <p>5 from 1989 until now.</p> <p>6 THE COURT: What's 14 -- I forgot.</p> <p>7 THE INTERPRETER: Fourteen.</p> <p>8 THE COURT: Stick with lawyering,</p> <p>9 Mr. Tease.</p> <p>10 Have you had the opportunity to discuss</p> <p>11 with Mr. Tease the plea offer?</p> <p>12 MR. RIVERA: No. To talk about what?</p> <p>13 THE COURT: The plea offer.</p> <p>14 MR. RIVERA: I do not understand.</p> <p>15 THE COURT: The State's offer to allow</p> <p>16 him to plead to some of the charges for a lesser</p> <p>17 sanction, I guess.</p> <p>18 MR. RIVERA: I do not understand.</p> <p>19 THE COURT: Do we have a copy of his</p> <p>20 record?</p> <p>21 MR. TEASE: Your Honor, I have a copy of</p> <p>22 his immediate sentencing form and a full printout of</p> <p>23 his record as well.</p>	<p>Page 66</p> <p>1 THE COURT: All right. You do not know</p> <p>2 what I'm talking about?</p> <p>3 MR. RIVERA: Not too much.</p> <p>4 THE COURT: I want a copy of his record</p> <p>5 to be marked as Court's exhibit.</p> <p>6 MR. TEASE: Yes, sir.</p> <p>7 THE COURT: Not a problem. We're still</p> <p>8 going forward. I mean, it doesn't bother me. State</p> <p>9 has offered you, and I'm sure you understand, to</p> <p>10 plead to two charges, trafficking and conspiracy</p> <p>11 second. And the sentence you would be exposed to</p> <p>12 would be three years to life. Now -- and I haven't</p> <p>13 looked up the number of charges, but it's still three</p> <p>14 years to life. And I assume the State would make</p> <p>15 some of the sentencing recommendation short of life.</p> <p>16 So, but what you're faced with right now is being</p> <p>17 allowed to plead to two charges with a possibility of</p> <p>18 three years to life.</p> <p>19 Mr. Tease, would you hand that to the</p> <p>20 clerk. I want to mark that as a Court's exhibit.</p> <p>21 I'll give it back to you.</p> <p>22 MR. TEASE: I'm showing an AG office rap</p> <p>23 sheet and, also, an NCIC search.</p>

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1 MS. KELSEY: It's actually not	1 quite hear exactly what he said, but I got the gist
2 Mr. Tease's. It's mine.	2 of some of it. And something to the effect, "Is this
3 THE COURT: Yeah.	3 guy crazy?" So, I think he said that in English.
4 MS. KELSEY: Just so the record is clear.	4 But he understands the concept, he understood, in my
5 THE COURT: All right. Well, the report	5 opinion, and I so find as a matter of fact. If I'm
6 is what it is. And he's got quite a few names here.	6 wrong, then, again, we'll simply do it over again.
7 MS. KELSEY: That's why I gave it to	7 But I don't think I'm wrong. I think this is an
8 Mr. Tease. I wanted --	8 attempt, a blatant ill-conceived attempt to delay the
9 THE COURT: All right, that's fine. I've	9 proceedings and make a record in hopes that the Court
10 explained the plea offer.	10 will make some sort of erroneous finding. If I have,
11 Mr. Ortiz, do you understand that offer?	11 I have.
12 I meant Rivera.	12 So, we'll go forward. And I understand
13 MR. RIVERA: I think so.	13 that he doesn't claim not to understand the plea
14 THE COURT: Okay. Would you like the	14 offer or the process. And it's -- I guess, given the
15 opportunity to discuss this matter further with	15 circumstances, I probably would do the same thing.
16 Mr. Tease?	16 But okay, we'll go forward.
17 MR. RIVERA: Now?	17 Mr. Tease, you will have the opportunity
18 THE COURT: Si.	18 to explain to him with the interpreter further. And
19 MR. TEASE: Yes.	19 we have to -- the interpreter's name.
20 MR. RIVERA: But talk about what with	20 THE INTERPRETER: Grettel Huber,
21 him?	21 your Honor.
22 THE COURT: The plea offer, if you want	22 THE COURT: You've been here a number of
23 to. If you don't, fine.	23 times?
Page 70	Page 72
1 MR. RIVERA: But talk about what?	1 THE INTERPRETER: Yes, your Honor.
2 MR. TEASE: Your Honor, I don't know when	2 THE COURT: You understand English;
3 they're going to pick. If there would be a break for	3 right?
4 lunch, I would ask for the opportunity.	4 THE INTERPRETER: Perfectly.
5 THE COURT: Well, I will let you have	5 THE COURT: So, all right. We'll go
6 that opportunity, but we're to go ahead and pick.	6 forward with it, and we'll pick. And then we'll --
7 Look, as interesting as this is,	7 all right. Thank you, gracias, Mr. Rivera. We'll
8 Mr. Rivera has a record longer than me. He's been in	8 whatever the Spanish word is for proceed. All right.
9 this Court on at least two occasions, facing serious	9 MR. TEASE: Thank you.
10 charges. And, Mr. Tease, I've watched you work for	10 THE INTERPRETER: Thank you.
11 at least 10 years, if not longer, and I know you're	11 THE COURT: We're prepared to proceed.
12 pretty thorough in explaining situations,	12 Did we send for them?
13 particularly where you know you needed an interpreter	13 How we going to do the order? I guess it
14 or translator. All of a sudden, there has been a	14 would be defendant one, State, defendant two. I have
15 contagious failure of recollection and ability to	15 to work it out. Is that how you normally do it?
16 understand. And it's spread -- fortunately, it	16 MR. FIGLIOLA: How many strikes are you
17 didn't start at first table but it spread back.	17 giving the defense, your Honor?
18 Now, the Court is not stupid. And I've	18 THE COURT: I thought -- does it say the
19 been around for a long time. And I'm afraid I don't	19 per defendant or defense?
20 accept this recent failure of recollection. And as a	20 MR. FIGLIOLA: It calls for six for the
21 matter of fact, I note specifically his appropriate	21 defense.
22 response or chuckle when Mr. Ortiz was coming up with	22 THE COURT: Okay.
23 some of his more inane responses. And I couldn't	23 MR. FIGLIOLA: So, it could be split up.

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1 So, your Honor can give us more in your discretion or 2 leave it at six.  3 THE COURT: There's no antagonistic 4 defense here; right?  5 MR. FIGLIOLA: No.  6 MR. TEASE: No, sir, your Honor.  7 THE COURT: We'll split it three/three, 8 State has six.  9 MR. FIGLIOLA: Thank you.  10 THE COURT: Unless you have some basis 11 for asking for more, I'll hear it. I just don't know 12 what it is.  13 MR. FIGLIOLA: Your Honor, if possible, 14 could we use the six together as opposed to 15 three/three?  16 THE COURT: Sure. I'm sorry. I thought 17 it was implicit if you wanted to. I didn't know. 18 They want to use them together. There's nothing to 19 stop them.  20 MS. KELSEY: Will they get six or will 21 they get 12?  22 THE COURT: No, they get six total.  23 MS. KELSEY: Okay. All right.	1 MS. KELSEY: No, your Honor. 2 MR. TEASE: No, sir. 3 THE COURT: See you in an hour. 4 (Luncheon recess.) 5 MR. TEASE: Your Honor, if I may be 6 excused to get the prosecutor. 7 THE COURT: I was pointing at his wife, 8 gave me a hard time. 9 DEPT. OF CORRECTION: 10:00 o'clock, sir. 10 THE COURT: Let's not make fun of old 11 people. 12 DEPT. OF CORRECTION: I'm old, too. 13 THE COURT: That's why I said it. 14 MR. TEASE: Your Honor, on behalf of the 15 State, they're asking for five minutes. They're 16 talking, I think, to other witnesses. In 17 Miss Kelsey's words, they're trying to avoid a 18 mistrial. "Tell the judge, we have five minutes, 19 we'll be able to avoid a mistrial."  20 THE COURT: Okay. 21 MR. FIGLIOLA: Your Honor, when 22 Miss Kelsey comes in, there's a scheduling problem. 23 It's not really mine.
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1 --- 2 (Untranscribed jury selection.) 3 ---  4 THE COURT: Do the attorneys have any 5 problem if I change that juror's seat just so he's 6 closer to the end?  7 MR. FIGLIOLA: I don't. 8 THE COURT: I'll make him No. 2. 9 MR. FIGLIOLA: I don't have any problem. 10 MS. KELSEY: I think you'd better make 11 him No. 1, your Honor, or put him in No. 1 seat so he 12 won't have to go up the step.  13 THE COURT: Well, I mean, I don't feel 14 one way or the other.  15 MR. FIGLIOLA: I have no problem if he 16 sits in the No. 1 seat, your Honor, but I would like 17 the No. 1 juror to retain the foreman's spot.  18 MS. KELSEY: That's fine. That works. 19 MR. TEASE: We agree.  20 THE COURT: Okay. I'll see you in an 21 hour. Thank you.  22 Any exceptions to the jury as selected? 23 MR. FIGLIOLA: No, your Honor.	1 MR. TEASE: It's mine. 2 MR. FIGLIOLA: But I bring it up. 3 MR. TEASE: The interpreter's not 4 available. 5 THE COURT: There's no interpreter 6 available tomorrow? 7 MR. TEASE: That's largely correct, 8 Judge. 9 THE INTERPRETER: It's not my fault. 10 MR. TEASE: May I explain, Judge? 11 THE COURT: Nobody understands anything, 12 anyway. What difference does it make? Come on, you 13 can smile. 14 Ma'am, I don't think you can bring sodas in. 15 MS. KELSEY: I'm sorry, your Honor. And 16 thank you for giving us a few minutes. I wanted to 17 explain to Miss Ayala what she can and cannot say so 18 that she doesn't volunteer things that are 19 inappropriate. And I appreciate the Court's time. I 20 think it will save us lots of time later. 21 THE COURT: Mr. Tease? 22 MR. TEASE: Your Honor, I'll try to be 23 brief. But there was an amenability hearing, I think

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1 you chaired, for a Christopher Mayer sometime ago 2 involving a home invasion. This codefendant is David 3 Daniels. And my understanding from Mr. Favata, who 4 is prosecuting, is that he even indicated to 5 your Honor on that day that there's not going to be 6 any plea offer in that case, that thing is going to 7 trial, which was the case all the way up until this 8 morning when that was scheduled for trial. So, based 9 on that, I told Miss Huber she was likely not needed 10 today and that Maria Pérez, another translator, would 11 not be needed for tomorrow because I'm going to trial 12 on David Daniels. That pled out today to an 13 eight-year minimum mandatory with a PSI.	1 defense, Mr. Favata did tell me -- 2 THE COURT: I'm not blaming either one of 3 you. This falls under the heading of things happen. 4 MS. KELSEY: And he did tell us both we 5 could put our witnesses on call. 6 THE COURT: Well, the only fault is for 7 listening to Mr. Favata. 8 MS. KELSEY: No, Judge Herlihy told us we 9 could put our witnesses on call. 10 THE COURT: That aside, I know I was 11 being sarcastic talking to Mr. Tease, which he 12 understood. He didn't do anything wrong, the 13 interpreter didn't do anything wrong. I'm not sure 14 we have a problem. I'll talk to Judge Smalls. And 15 other than not being up to the 11th floor or a while, 16 I think we'll be okay.
14 Miss Huber was kind enough to come in and 15 has also tried to make arrangements to be our 16 translator for tomorrow because Miss Perez is not 17 available now. She has to be in Court of Common 18 Pleas in the morning for a trial and, also, has an 19 afternoon calendar, I think either in Family Court or 20 CCP.	17 What do you have in Family Court? 18 THE INTERPRETER: I have one arraignment, 19 but that can be taken care of.
21 She has again tried to help out, 22 your Honor, and get somebody else to fill in, and 23 she's been unable to do that. So, it falls on me.	20 THE COURT: Yeah. I'm not worried about 21 Smalls. Obviously, Judge Smalls and I are pretty 22 close friends but, even if we weren't, I don't think 23 he would jump up and down too much. It's just the
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1 And that's the bottom line, and we have a problem 2 with the translator tomorrow. 3 THE COURT: Mr. Tease, in what Court are 4 you in? 5 MR. TEASE: Superior Court. 6 THE COURT: And on the organizational 7 chart of courts, what two other courts does the 8 Superior Court trump? 9 MR. TEASE: Court of Common Pleas and 10 Family Court. 11 THE COURT: Good answer. I don't know 12 how we're going to work it out, but I got a double 13 defendant eight- or nine-count or 12-count, something 14 count, trial that's already started. And I will 15 speak to -- who is the attorney you're in front of 16 for tomorrow, ma'am? 17 THE INTERPRETER: We have the Suspension 18 and Insurance calendar in the morning and nonjury 19 trials in the afternoon Court of Common Pleas. 20 THE COURT: All right. I will talk to 21 Judge Smalls, who will probably want to shoot me, but 22 it won't be the first time. 23 MS. KELSEY: Your Honor, in Mr. Tease's	1 kind of person he is. I'll take care of that. And 2 I'll just owe him, unfortunately, big time. He will 3 collect. But let me, before -- I'll go up there, if 4 we ever get done and take a recess, but I'll talk to 5 Smalls and I think we're okay. You two won't take 6 the heat, no matter what happens. 7 Let the record reflect I was only 8 kidding, that the Superior Court doesn't really trump 9 any courts. We're all equal. 10 All right. Can we bring the jury in now? 11 (Jury enters courtroom at 3:02 P.M.) 12 THE COURT: Sir, excuse me -- stop right 13 there. Come on up this way. We're going to try to 14 make it a little easier. Everybody else move down 15 one. To mess with that thing getting in and out of 16 there will drive you absolutely nuts. And the record 17 should reflect that he was No. 7, and we physically 18 switched -- moved everybody one so No. 7 could have 19 the easiest access and, but that doesn't change who 20 you are in terms of your original numbers and who's 21 foreperson. It just makes it easier because that 22 looks awkward, to do all that kind of stuff. And our 23 jury boxes, unfortunately, were not made accessible

<p>1 as well for anybody who has some difficulty.</p> <p>2 All right. Neither side objects, we'll proceed.</p> <p>3 Swear the jury.</p> <p>4 (Jury sworn.)</p> <p>5 THE CLERK: You may be seated. Members of the jury, you've all been severally sworn or affirmed. Stand together and hear the evidence.</p> <p>6 Your Honor.</p> <p>7 THE COURT: Ladies and gentlemen, good afternoon. We were delayed addressing, again, some miscellaneous matters. There are a couple things I want to bring to your attention.</p> <p>8 First, you should not begin to discuss or deliberate concerning any of the issues with which you will be presented during this trial until you have heard opening and closing statements by the attorneys, all the evidence has been presented, and I have instructed you as to the applicable law. We ask you not to do so until everything is over, at least in terms of the presentation and argument, because we find, as a matter of human nature, once people begin to discuss or deliberate over issues, it becomes that</p>	<p>Page 81</p> <p>1 ask that you have someone screen the local newscast or newspaper reports before you look at them or listen to them or see them.</p> <p>2 Fourthly, we ask you to avoid any of the scenes -- I mean, to avoid going to any of the scenes that will be described in this matter. Jurors should hear all things at the same time under similar conditions and at the Court's direction.</p> <p>3 Finally, if you should run afoul of any of these admonitions, please let myself or the bailiff know immediately.</p> <p>4 Next, you will see that, at the second defense table closest to the rear, you have a young lady who's whispering to one of the defendants in this matter. She's not being rude. As you might guess, she's an interpreter. She's a licensed or certified -- I forget what it's called -- Court interpreter, and she is there and will be talking as unobtrusively, I guess is the term, as possible. So, if you hear a little slight murmuring, it's obviously her, and it's permitted by the Court and, indeed, constitutionally required, I believe, under certain circumstances. So, I just wanted to let you know</p>
<p>1 much harder for them to reevaluate positions initially taken when presented with evidence or argument that is more persuasive or which dictates maybe a different result.</p> <p>2 So, not even on recesses or breaks or anything like that, and even such inconsequential things as you may think, such as, "Gee, that witness sure looked good," or, "That witness sure looked bad," or X, Y and Z, even that is prohibited. And I know it sounds kind of fundamental, but we've had problems with that before.</p> <p>3 Secondly, we ask that you not discuss this case until everything is over and you have been released as jurors with any friends, relatives or significant others, and for pretty much the same reason; but, also, these people will not have had the benefit of what you're going to hear and see. We don't want any outside taint in the process.</p> <p>4 Thirdly, we ask that you avoid any media coverage of this trial, should there be any. Now, I'm not suggesting there will be, but I can't tell you there won't be. Sometimes, the press stops in at various trials just to see what's going on. But we</p>	<p>Page 82</p> <p>1 that's what that was and that's how we're doing it.</p> <p>2 Now, we're going to go today. We usually stop as close to 5:00 as we can get and resume at 10:00. If there are any problems that I foresee, I'll let you know. Right now, I don't have any.</p> <p>3 There's one matter I need to clear up in about an hour to clear the schedule, but I think we're okay.</p> <p>4 So, you know, you may get out early today, you may not, but we'll go forward.</p> <p>5 If anybody has any problems, any employment verification, anything like that, you let me know and I'll address it for you.</p> <p>6 Everybody okay? All right. I believe, having said that, we are prepared to proceed with opening statements.</p> <p>7 MS. KELSEY: Thank you, your Honor.</p> <p>8 Ladies and gentlemen of the jury, good afternoon.</p> <p>9 The easiest way to explain to you what your job will be is to first explain to you what happened and, then, I will explain to you what happened and how that proves that the defendants committed the offenses for which they have been indicted.</p>

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1 On October 18 of the year 2002, not quite  
 2 a year ago, the defendants Isaias Ortiz, who's  
 3 represented by Mr. Figliola -- and he's seated at the  
 4 table in front of us, Mr. Figliola is -- Anthony  
 5 Figliola is the person closest to you, and the  
 6 defendant Ortiz is the person next to him -- and  
 7 Nemensio Rivera, who is the person in the middle in  
 8 the back table -- and next to him, closest to you, is  
 9 his attorney who is Christopher Tease. But, anyway,  
 10 they were engaged in some drug dealing in the City of  
 11 Wilmington. And the Wilmington Police Department, on  
 12 October 18 of the year 2002, had a search warrant for  
 13 a residence which was -- which I will refer to as  
 14 1908 Lancaster Avenue. It was Apartment B. But  
 15 we'll refer to that as 1908 Lancaster Avenue. And  
 16 that's so you don't get confused about which  
 17 residence it is. They had a search warrant for that  
 18 residence.

19 Pursuant to the execution of the search  
 20 warrant -- they were doing surveillance. You know,  
 21 before they executed the search warrant, they kind of  
 22 watch the place, see what's going on, and a detective  
 23 by the name of Charles Emory was doing the

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1 surveillance. He observes the defendant Ortiz and a  
 2 person by the name of Som -- Solmari Ayala leave the  
 3 residence. Defendant is approximately 35 years old,  
 4 or better than 35 years old. Miss Ayala is -- it was  
 5 actually her 16th birthday. Nonetheless, they were a  
 6 couple. And they were observed leaving 1908  
 7 Lancaster Avenue.

8 They go around the corner and get in a  
 9 car, which you'll subsequently learn was a BMW. And  
 10 they get in that car and the police, because they  
 11 have just left the residence where they have a search  
 12 warrant, and because they have parked so far away  
 13 from the residence where the police had the search  
 14 warrant -- and they'll explain the significance of  
 15 all that -- the police stop the car. And when they  
 16 stopped the car and defendant is driving, Mr. Ortiz  
 17 is driving, and he has a set of keys that he is using  
 18 to drive the car, and Miss Ayala is in the passenger  
 19 seat. They stop the car. Neither of them have a  
 20 driver license, identification, so the police detain  
 21 them, and Miss Ayala tells them that she's 20. They  
 22 look in her -- her sweater, which she says it's her  
 23 sweater, and it's a woman's sweater, so even though

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1 they asked, they already know it's her sweater in the  
 2 back seat of the car. And they find a package of a  
 3 white powdery substance which turns out to be  
 4 cocaine. So, they take the defendant Ortiz and  
 5 Miss Ayala down to the Wilmington Police station.

6 Now, meanwhile, the other police officers  
 7 at the Wilmington Police Department execute the  
 8 search warrant at 1908 Lancaster Avenue. And in 1908  
 9 Lancaster Avenue, they find the defendant, Nemensio  
 10 Rivera, another person -- and another person by the  
 11 name of Danielle Farmer in that residence. And in  
 12 that residence, they find -- and they'll tell you  
 13 exactly where they found it. In some bedrooms and  
 14 some kitchen cabinets, they find more cocaine and  
 15 heroin. And they also find some things to package  
 16 those things for sale. And they'll tell you what  
 17 those things are when -- when they tell you about the  
 18 search of 1908 Lancaster Avenue.

19 Now, meanwhile -- and they execute that  
 20 search warrant. And of significance, they find  
 21 Nemensio Rivera has a large quantity of money in his  
 22 pocket, in addition to that.

23 Meanwhile, at the Wilmington Police

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1 Station, Miss Ayala's mother has arrived at the  
 2 police station and informed the police that she is  
 3 not the 20 that she says she is, but she is, in fact,  
 4 16. And they give the -- she gives the Wilmington  
 5 Police an address which is different from the address  
 6 that Mr. Ortiz had given the Wilmington Police with  
 7 regard to his bail information. So, the Wilmington  
 8 Police go to the address that the defendant had given  
 9 and the defendant Ortiz doesn't live there. And, so,  
 10 they go to the address that -- that Miss Ayala's  
 11 mother had given the Wilmington Police Department and  
 12 they have the keys with them. And, lo and behold,  
 13 the keys fit the mailbox and they fit the door to  
 14 that address that Miss Ayala's mother had given them.  
 15 So, the Wilmington Police get a search warrant for  
 16 1933 West Fourth Street.

17 Now, at 1933 West Fourth Street, they  
 18 find a large quantity of cocaine. And it's in two  
 19 packages, but they find a large quantity of cocaine  
 20 and, in fact, that quantity of cocaine is in excess  
 21 of a hundred grams of cocaine. They also find at  
 22 that second place, the 1933 West Fourth Street, they  
 23 also find a -- they find some pictures of Miss Ayala

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<p>1 and they find some pictures of Miss Ayala and the 2 defendant Ortiz together.</p> <p>3 So, those are the charges which are -- 4 those are the facts. And what you get out of those 5 facts are a number of different charges.</p> <p>6 First of all, the defendant Ortiz is 7 charged with trafficking in cocaine over a hundred 8 grams. Now, trafficking in cocaine has sort of a 9 common everyday meaning. You know, when you watch TV 10 and they have shows about drug dealers, they call 11 them traffickers. And, so, it has a sort of -- and 12 you think of planes and kilos and things like that.</p> <p>13 But under Delaware law, it has a specific 14 meaning which is different from the everyday ordinary 15 meaning. Under Delaware law, if you are in 16 possession of -- then it was 5 grams but now it's 10 17 grams -- in excess of 10 grams of cocaine, then you 18 are guilty of trafficking in cocaine. And there are 19 levels of trafficking in cocaine, and one of those 20 levels, the highest level, is over a hundred grams of 21 cocaine. And that is so Ortiz, Mr. Ortiz, is charged 22 with trafficking in cocaine over a hundred grams.</p> <p>23 Now, Miss Ayala, you'll notice her name</p>	<p>Page 89</p> <p>1 will be the State's first witness -- that she will 2 tell you that Mr. Ortiz picked her up on this 3 particular day -- and it was her 16th birthday -- at 4 her mother's house. And they went to what she refers 5 to as the crack house -- and that's 1908 Lancaster 6 Avenue -- for the purpose of getting money from 7 Mr. Rivera. And she -- she's not certain if they, in 8 fact, left drugs for Miss Farmer and Mr. Rivera to 9 sell, but -- but it's her understanding that 10 Mr. Rivera sold the cocaine and Miss Farmer sold the 11 heroin.</p> <p>12 The other charge that they are charged 13 with, those three people are charged with, and 14 actually another person, is possession with intent to 15 deliver cocaine. And that's Luis Amaro, Danielle 16 Farmer, or Isaias Ortiz, and Nemenzio Rivera. And 17 that is also, in fact, cocaine, and that is also from 18 this particular day. And then Miss Farmer, 19 Mr. Ortiz, and Mr. Rivera are also -- Rivera are also 20 charged with possession with intent to deliver 21 heroin. There was also heroin at 1908 Lancaster 22 Avenue.</p> <p>23 There is, also, Mr. Ortiz is charged with</p>
<p>1 is nowhere in -- in the indictment when you get a 2 chance to see the indictment. And I want to point 3 out that she's a juvenile, so her charges never came 4 to Superior Court; they went to Family Court. So, 5 while there are other people's names in the 6 indictment, hers is not one of them because she is 7 not 18 years of age. So, she's not -- she's not 8 listed as a defendant in any of these charges. But 9 he's charged with possession of over a hundred grams, 10 based on the drugs which were found at 1933 West 11 Fourth Street.</p> <p>12 Now, a person by the name of Danielle 13 Farmer, who is one of the people that was at 1908 14 Lancaster Avenue, and, then, Mr. Ortiz and 15 Mr. Rivera, are also charged with a separate count of 16 trafficking in cocaine. And that's five to 50 grams 17 of a mixture containing cocaine. And that is the 18 other end of the spectrum with regard to trafficking 19 in cocaine, because it is more than 5 grams but less 20 than 50 grams. And that's based on the cocaine which 21 was found at 1908 Lancaster Avenue.</p> <p>22 And I want to point out that Miss Ayala 23 will tell you when -- when she testifies -- and she</p>	<p>Page 90</p> <p>1 use of a vehicle for keeping controlled substances. 2 I want to tell you a little bit about the law with 3 regard to that. It's called use of a vehicle for 4 keeping controlled substances. The statute calls it 5 maintaining a vehicle for keeping controlled 6 substances. But in any event, the point is that it 7 is not whether you buy the gas, you know, pay the car 8 bill, whatever, when you use a vehicle for keeping 9 controlled substances. And the same is also true of 10 a house. The statute is the same -- and we're going 11 to get to that in a minute -- or use of a dwelling 12 for keeping controlled substances. It's not whether 13 you pay the rent, it's not whether, you know, you fix 14 the faucets when they break. It's whether or not you 15 use it and use all of the constitutional protections 16 that everybody has with regard to not having their 17 privacy invaded, not being subject to unlawful 18 searches and seizures. When you use that vehicle or 19 that car or that dwelling for that specific purpose, 20 then you are guilty of use of a vehicle or use of a 21 dwelling.</p> <p>22 And in this case, it's the 1989 BMW, 23 which the defendant Ortiz and Miss Ayala were in when</p>
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1 they were stopped by the police which had the cocaine  
 2 in Miss Ayala's sweater pocket on that particular  
 3 occasion when we -- when they were leaving 1908  
 4 Lancaster Avenue.

5 There is also a charge of use of a  
 6 dwelling for keeping controlled substances, and that  
 7 is also -- that is 1908 Lancaster Avenue, and that's  
 8 Danielle Farmer and Nemensio Rivera. And there's  
 9 also a use of a dwelling for keeping controlled  
 10 substances, and that's Mr. Ortiz' charged with that,  
 11 and that's the 1933 West Fourth Street apartment  
 12 building.

13 Now, there is also a charge of conspiracy  
 14 in the second degree. And it charges Danielle  
 15 Farmer, Isaias Ortiz, and Nemensio Rivera, that they  
 16 agreed with each other to engage in possession with  
 17 intent to deliver cocaine.

18 Under Delaware law -- and I want to make  
 19 sure that you pay attention to this. Under Delaware  
 20 law, there is a section of the code which is  
 21 conspiracy. And under Delaware law, you can sit  
 22 around with people all day long and agree to commit  
 23 offenses, and that -- all kind of crimes. And unless

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1 you do something, or the person you're agreeing with  
 2 does something in furtherance of that conspiracy or  
 3 that agreement to commit a crime, then you have  
 4 committed no offense. But once you do something,  
 5 then you are guilty of the offenses for which you  
 6 have conspired to agree to. And that's true whether  
 7 or not you actually commit the offenses that you  
 8 agree to commit. And, so, in this particular  
 9 instance, Danielle Farmer, Isaias Ortiz, and Nemensio  
 10 Rivera, when they agreed to possess and agreed to  
 11 deliver cocaine and they actually had the cocaine,  
 12 then they are guilty of conspiracy in the second  
 13 degree.

14 Now, there is a part, it's related to  
 15 conspiracy in the second degree although it's not  
 16 exactly the same thing. There's another part of the  
 17 Delaware law that I want you to pay attention to with  
 18 regard to particular offenses, and that's what's  
 19 called accomplice liability, or aiding and abetting.  
 20 And what that means is that, if -- if you help  
 21 somebody else commit an offense, then whether or not  
 22 you actually did the offense or not, you are guilty  
 23 of committing the offense. And the most, you know,

1 most sort of clear-cut example is in the instance of  
 2 a getaway driver, where, you know, two people agree  
 3 to rob a bank, and one person stays outside with the  
 4 car, while the other person goes into the bank and  
 5 pulls out the gun and robs -- takes the money from  
 6 the bank and then runs back outside and jumps in the  
 7 car and the getaway driver speeds him away. Well,  
 8 they have -- they have agreed, they have conspired to  
 9 commit the bank robbery, and one or both -- one of  
 10 them has committed an overt act -- actually, they  
 11 both have, an overt act in furtherance of the bank  
 12 robbery, and they're accomplices. They both -- you  
 13 know, the getaway driver has helped the guy who  
 14 actually went into the bank, so they are both guilty  
 15 of robbing the bank. Even though the getaway driver  
 16 never went into the bank, never had the gun, never  
 17 took any money, never did anything like that, he is  
 18 still an accomplice.

19 So, keep that in mind as you listen to  
 20 this, because you will notice that Mr. Ortiz isn't  
 21 actually in 1908 Lancaster Avenue and -- when the  
 22 police execute the warrant, but based on the  
 23 accomplice liability, the fact that he was there

1 earlier, the fact that he went there for the purpose  
 2 of obtaining money and supplying drugs on this  
 3 particular occasion indicates that he is an  
 4 accomplice to the other two with regard to that  
 5 particular offense.

6 Now, the other thing that the defendant  
 7 is charged with is endangering the welfare of a child  
 8 by contributing to the delinquency of a child under  
 9 18 years of age.

10 Miss Ayala will tell you that she was --  
 11 it was her 16th birthday, she obviously remembers the  
 12 day. And she was -- and she knew she was in -- you  
 13 know, accompanying Mr. Ortiz who was, you know,  
 14 almost 28 years older than she was, while he was, you  
 15 know, delivering drugs, supplying drugs, doing those  
 16 kind of things. And in that way, he was contributing  
 17 to her delinquency with regard to these particular  
 18 offenses because that makes her a juvenile  
 19 delinquent.

20 And, then, with regard to possession of  
 21 drug paraphernalia, Danielle Farmer and Mr. Rivera  
 22 are charged with possession of drug paraphernalia,  
 23 the packing materials that I told you that were in

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1 1908 Lancaster Avenue, those -- those packing  
 2 materials are what is considered -- well, they're  
 3 used to pack, repack, store, contain or ingest into  
 4 the human body controlled substances. So, based on  
 5 that, those -- they possessed those particular  
 6 substances at 1908 Lancaster Avenue.

7 Those are the offenses. That's a brief  
 8 summary. You will hear much more detail from the  
 9 police officers. Especially in a case where the  
 10 facts are somewhat convoluted, it -- you don't want  
 11 to hear them all from me and then hear them all again  
 12 from the sworn witnesses. So, it's a summary of the  
 13 facts and a lot of the facts are omitted. And keep  
 14 that in mind.

15 But let me just tell you a little bit  
 16 about how this trial will proceed.

17 My name is Cynthia Kelsey. I'm a Deputy  
 18 Attorney General and I am here on behalf of the  
 19 people of the State of Delaware. And assisting me  
 20 today is Renee Hrvnak, and she was seated -- she was  
 21 here when you were selected as the jury, and she's  
 22 seated at the table where I was just sitting. And  
 23 with Miss Hrvnak and I is Detective Michael

1 they're guilty beyond a reasonable doubt. Then, if  
 2 the defendants decide to present evidence, the State  
 3 can present what's called rebuttal evidence. We can  
 4 sort of -- if we want or need, feel like we need to  
 5 say something about what they said. And, then, there  
 6 will be closing arguments. And the State gets to go  
 7 first and, you know, by now, you all know that's  
 8 because the State has the burden of proof. Then, the  
 9 defendants get to give their closing arguments. And,  
 10 then, the State gets to give a rebuttal closing  
 11 argument. The State gets to go twice because the  
 12 State has the burden of proof. Then,  
 13 Judge Toliver -- and he's easy to spot, he's on the  
 14 bench -- will instruct you on the law which you must  
 15 apply to the facts in this case. You, as jurors,  
 16 don't get to or don't have to -- I guess it depends  
 17 on how you look at it -- decide what you think the  
 18 law should be. Judge Toliver will tell you what the  
 19 law is, and you have to listen to what Judge Toliver  
 20 says. You don't have to listen to what I say, you  
 21 don't have to listen to what the defense attorney  
 22 said, but you have to listen to what Judge Toliver  
 23 says. He will tell you what the law is. And, then,

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1 Rodriguez from the Wilmington Police Department.  
 2 He's a detective, and he's an undercover detective,  
 3 so that's sort of why he's dressed the way he's  
 4 dressed. And he's what's called the chief  
 5 investigating officer, so he gets to sit in  
 6 throughout the whole trial.

7 Now, in every criminal case, the State  
 8 has the burden of proof. The State has to prove the  
 9 defendant guilty beyond a reasonable doubt, and the  
 10 defendant doesn't have to prove anything. So, the  
 11 State always gets to go first. The State gets to  
 12 give their opening arguments first and, then, the  
 13 defendants can give their opening arguments if they  
 14 so choose. And, then, the State will present  
 15 evidence, and the State has to present enough  
 16 evidence to prove the defendants guilty beyond a  
 17 reasonable doubt. Then, the defendants, they can  
 18 give their opening, if they haven't already done so.  
 19 They have a choice to do it either before the State's  
 20 evidence or after the State's evidence. But, then,  
 21 they can present evidence, if they so choose. They  
 22 don't have to present any evidence because they don't  
 23 have to prove anything. The State has to prove that

1 you, the jury -- he'll do that after all the closing  
 2 arguments are done. Then, you, the jury, will retire  
 3 to the jury room to deliberate, and you, the jury,  
 4 will decide what you think the facts are.

5 You have to decide what the facts are.  
 6 Judge Toliver can't tell you what the facts are. You  
 7 have to decide who you believe, you know, whether or  
 8 not there was enough evidence for this fact to be  
 9 true, whether or not there was enough evidence for  
 10 that fact to be true. You have to decide what the  
 11 facts are. And once you decide what the facts are,  
 12 then you have to apply the law that Judge Toliver has  
 13 given you to the facts as you believe them to be,  
 14 based on the evidence that's been presented and, in  
 15 that way, you render a fair and impartial verdict  
 16 based on the evidence and the law. And then you come  
 17 back into the courtroom and you tell the Court what  
 18 your verdict is based on the evidence and the law.

19 Now, the only other thing that you need  
 20 to be careful of is, the State has to prove each  
 21 defendant guilty beyond a reasonable doubt. Just  
 22 because one of the defendants is guilty doesn't mean  
 23 that there was enough facts to prove the other

<p style="text-align: right;">Page 101</p> <p>1 defendant guilty. So, you have to decide separate      2 verdicts based on separate evidence for each of the      3 defendants. And I wanted to point that out to you.      4 But based on the evidence that will be presented and      5 the law that Judge Toliver will give you, your      6 verdicts in this case will be guilty.</p> <p>7 I thank you for your time and attention      8 throughout this trial. And I apologize in advance      9 for the inevitable delays, which I'm afraid you have      10 already gotten a healthy dose of, that are caused on      11 behalf of the State. Thank you.</p> <p>12 MR. FIGLIOLA: Good afternoon, ladies and      13 gentlemen. Miss Kelsey may have introduced me. I'm      14 Anthony Figliola. I represent Mr. Ortiz.</p> <p>15 Much of what Miss Kelsey said to you, we      16 can't attack. Only, generally, when we get up here,      17 we can tell you what you're supposed to do and what      18 you're not listening to, but Miss Kelsey's opening      19 statement encompassed some of the things that I would      20 normally say; that is, the burden of proof is on the      21 State. Miss Kelsey got up in front of you and she      22 recited what she believes, what the State believes      23 are the facts. At this point in time, that's all it</p>	<p style="text-align: right;">Page 103</p> <p>1 they say you have to listen to everything, because      2 it's not clear-cut, it's not clear-cut as to who knew      3 who owned what?</p> <p>4 You're going to hear from various      5 witnesses. Pay attention to what each and every one      6 says. They were indicted with Miss Farmer and      7 Miss -- and one of their, Mr. Amaro, I believe. That      8 has no bearing on this case unless Miss Farmer or      9 Mr. Amaro determine to come forward and testify. You      10 have to remember that. The State made mention about      11 what they may have been doing. It doesn't matter.      12 That's not to be considered by you unless they come      13 forward and testify.</p> <p>14 The State also does something in their      15 opening that I always comment on because it      16 personally aggravates me. Miss Kelsey gets up there      17 and she says that she represents the people of the      18 State of Delaware. That's not right. She does not      19 represent the people of the State of Delaware. She      20 may represent the State of Delaware, but she      21 certainly does not represent the people, because      22 she's not representing me, she's not representing      23 Mr. Rivera, or Mr. Ortiz or Mr. Rivera. She's</p>
<p style="text-align: right;">Page 102</p> <p>1 is. That's what the State believes the facts are.      2 The facts are what you determine them to be.</p> <p>3 Later on in the trial, the judge will      4 give what they call jury instructions. The jury      5 instructions will tell you the law that is to be      6 followed when you are determining guilt and      7 innocence. What the judge tells you is the law --      8 not what the attorneys tell you in either their      9 opening or closing arguments. What Miss Kelsey told      10 you when she said the burden of proof is on the      11 State, it is always on the State. What she told you      12 is not fact. The State has to prove it.</p> <p>13 There are other things the State has to      14 prove, like did the defendants know, particularly      15 Mr. Ortiz, did he know there were drugs at 1933 West      16 Fourth Street? The elements says "knowingly      17 possess." That means you have to know that there      18 were drugs there. The mere fact that there were      19 drugs there and he had a key to that house does not      20 mean he knows that drugs are in that house. It      21 wasn't his house. The drugs that were found in the      22 car were not found on him. They were found on      23 someone else. That's the State's case. That's why</p>	<p style="text-align: right;">Page 104</p> <p>1 certainly not representing Mr. Toliver. And if she's      2 representing any one of the 14 people in that jury      3 box, you ought to raise your hand right now and ask      4 to be excused from this jury. I mean it. You      5 shouldn't be sitting on the jury if you believe that.      6 That man is innocent until they prove every element      7 of that indictment. That is their duty. That's why      8 they get to talk to you twice. The burden of proof      9 is on the State, and it always is on the State. And      10 you have to start with the mind-set that that man is      11 innocent. And the State does not represent you.      12 And, again, if you believe that's true, let the judge      13 know.</p> <p>14 Thank you.</p> <p>15 THE COURT: First witness now?</p> <p>16 MR. TEASE: Your Honor.</p> <p>17 MS. KELSEY: I think Mr. Tease --</p> <p>18 THE COURT: I'm sorry, Mr. Tease.</p> <p>19 MR. TEASE: I was hiding back there.</p> <p>20 Thank you, your Honor.</p> <p>21 Ladies and gentlemen, good afternoon, and      22 thank you for waiting so long. To add to what the      23 other lawyers have said, keep in mind that as</p>

1 Mr. Figliola was saying, these defendants are cloaked  
 2 in a veil of innocence. We all are. As I stand  
 3 before you today, they have noted their opportunity  
 4 to tell their side of the story. An indictment has  
 5 been brought. This is the first time anyone's  
 6 deciding this case. So, please remember, they come  
 7 before you innocent.

8 State has promised to prove this case  
 9 beyond a reasonable doubt. Keep in mind that is the  
 10 highest standard of proof in the law. I think most  
 11 people are familiar with the civil standard which is  
 12 preponderance of the evidence. That's when, for  
 13 example, a car accident, somebody gets hurt in that  
 14 car accident, they're injured, they bring a civil  
 15 lawsuit, they have to prove by 50 percent or greater  
 16 that the person who caused that accident caused their  
 17 injury. If they're able to do 51 percent, that's  
 18 preponderance of the evidence.

19 Now, reasonable doubt is, again, the  
 20 highest standard of law, and it's much higher than  
 21 this 50 percent preponderance of evidence standard.  
 22 When you're reviewing the facts here, applying those  
 23 to the law, keep in mind that the State is held to

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1 this highest burden because these are very serious  
 2 criminal offenses that both of these defendants face.

3 As Mr. Figliola said, your obligation as  
 4 jurors is serious. And that obligation is to keep an  
 5 open mind throughout all of this, to put aside any  
 6 preconceived notions you may have about crimes, about  
 7 crimes in our society. Human nature will make it  
 8 difficult for you to do that, because I think we all  
 9 came into this courtroom with an idea about crime in  
 10 our society. But your oath as jurors is to try to  
 11 recognize those preconceived notions, try to  
 12 recognize where they came from, and put them aside  
 13 for these next three days as you hear the facts of  
 14 this case.

15 This is probably one of a hundred cases  
 16 Miss Kelsey and Miss Hrvnak are working on. They  
 17 are doing their job, I'm doing my job, Mr. Figliola  
 18 is doing his. But for my client, this is the most  
 19 serious thing that has ever gone on in his life. And  
 20 keep this in mind. This is his time to present his  
 21 case and have the State prove their case beyond a  
 22 reasonable doubt.

23 Again, keep in mind your duty here. It's

1 not to convict. It's to hear evidence. It's to see  
 2 if that evidence meets proof beyond a reasonable  
 3 doubt. I will submit to you that, after hearing this  
 4 over the next few days, you will see tremendous holes  
 5 in the State's case with respect to my client's case,  
 6 Mr. Rivera. He was present in a crack house. They  
 7 executed a warrant, you know, they found drugs in  
 8 that house. It's not his house. He just happened to  
 9 be there. He's not in possession of those drugs. At  
 10 the end of the case, you're going to say, I am  
 11 confident that we do have reasonable doubt about  
 12 that. We cannot say that Mr. Rivera possessed any of  
 13 these drugs.

14 So, again, bear with us for these days,  
 15 and thank you for your time. And, again, I think, at  
 16 the end of the case, you'll return a verdict of not  
 17 guilty for my client.

18 Thank you.

19 MR. FIGLIOLA: Your Honor, can we  
 20 approach sidebar.

21 THE COURT: Yeah.

22 (The following discussion took place at  
 23 sidebar):

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1 MR. FIGLIOLA: Your Honor, I just wanted  
 2 to point out that, during my opening when I remarked  
 3 that if anyone felt that Miss Kelsey represented --  
 4 any of the jurors felt Miss Kelsey represented them,  
 5 that they should raise their hand. Juror No. 5,  
 6 who's actually sitting in Juror seat No. 7 raised his  
 7 hand. I would ask that he be excused.

8 THE COURT: Well, I think we have to  
 9 figure out what he meant because --

10 MR. FIGLIOLA: We could ask him first.

11 THE COURT: But I mean, if he's saying  
 12 that she represents the State and he's a part of the  
 13 State, if he may have meant that, I'm not sure what  
 14 you have to say about that.

15 MS. KELSEY: His tax dollars pay me.

16 MR. FIGLIOLA: Did you see him raise his  
 17 hand? I saw him.

18 MS. KELSEY: No.

19 MR. FIGLIOLA: I saw him raise his hand.

20 THE COURT: Let me ask -- well, that's  
 21 Mr. Lee, I think it is.

22 MR. FIGLIOLA: Yes, Mr. Lee.

23 THE COURT: All right. I'll --

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1 MR. FIGLIOLA: I'm sorry. I'm not going  
2 to say that.

3 THE COURT: All right. Let us send them  
4 out. We may not get started until tomorrow anyway, I  
5 know.

6 MS. KELSEY: I don't know -- I'd like to  
7 finish with her.

8 THE COURT: I'd like to hear her  
9 testimony, too. All right. Mr. Kilgore, would you  
10 take the jury out and leave Mr. Lee in.

11 MR. FIGLIOLA: I said I do that all the  
12 time. It's the first time anybody raised their hand.

13 MS. KELSEY: I didn't see him do it.

14 THE COURT: I thought it was a bit much.

15 MS. KELSEY: I knew I could bait you into  
16 saying that.

17 MR. FIGLIOLA: You did.

18 MS. KELSEY: Because you did it.

19 MR. FIGLIOLA: I did it in the other one,  
20 too.

21 (Jury leaves courtroom at 3:43 P.M.)

22 (Juror Lee remains in courtroom.)

23 THE COURT: You can remain seated. It's

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1 okay.

2 When Mr. Figliola, in the gray suit, was  
3 making his opening statement, he asked if anyone here  
4 thought that they were represented by Miss Kelsey.  
5 Did you raise your hand?

6 JUROR: No, I didn't. I did -- started  
7 to but I didn't actually put it up.

8 THE COURT: Okay. You said you started  
9 to. Why? I'm just curious.

10 JUROR: Because I disagreed with him.

11 THE COURT: That she didn't represent  
12 you?

13 JUROR: No, she represents the people of  
14 the State.

15 THE COURT: Okay. All right. That's  
16 fine. That's all I wanted to know. You don't  
17 discuss what I just asked you. I just wanted to  
18 know, clarify something. Okay?

19 He's going to take you out for a minute  
20 and then we'll bring everybody back in.

21 (Juror Lee leaves courtroom at 3:45 P.M.)

22 THE COURT: Mr. Figliola, I mean, his  
23 explanation was simple and straightforward. He feels

1 the State represents the people. And, in theory,  
2 that's probably the case.

3 MR. FIGLIOLA: Well, your Honor, the  
4 reason I make that, I think if a juror starts off  
5 with the belief that Miss Kelsey is representing  
6 them, that's their standing -- my position is they're  
7 starting on the wrong foot. They cannot feel that  
8 Miss Kelsey is representing them. They have to be  
9 totally unbiased in order to give the defendant a  
10 fair trial.

11 THE COURT: Well, he said he disagreed  
12 with your proposition that Miss Kelsey was -- and he  
13 said she thought she was representing the State.

14 MR. FIGLIOLA: Correct.

15 THE COURT: So, but she is.

16 MR. FIGLIOLA: No, she is representing  
17 the State. But she's not representing the people of  
18 the State. If she's representing the people of the  
19 State, she's representing you and me, the Court  
20 clerks, and the defendants.

21 THE COURT: And, in theory, that's true.

22 MR. FIGLIOLA: Well --

23 THE COURT: This is kind of like the time

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1 I was talking to jurors because they might listen to  
2 me. I mean, I say obviously, euphemistically, but I  
3 can't -- if your motion is to strike him, I'm not  
4 going to strike somebody because you raise -- I'm not  
5 even somehow sure how it was relevant, unless you  
6 were trying to get to bias. But we had voir dire.  
7 He didn't indicate any bias one way or the other.  
8 And he just simply thought -- which, I mean, it's  
9 nice, but, I mean, I guess I was waiting for somebody  
10 to say, "Well, yes, she does," because I'm thinking  
11 yes, she does represent me and all the citizens and  
12 the defendants and the Corrections' officers and the  
13 police officers. And if you feel that someone feels  
14 that she represents -- he said he didn't, said she --  
15 he didn't say she represented him, represented all  
16 the citizens of the state.

17 And on that basis, I'm not going to  
18 disqualify him from serving as a juror because he  
19 feels the State represents the people. If they watch  
20 Law and Order, they're going to hear that. I mean,  
21 that's what you hear on television all the time. I'm  
22 not saying, because you hear it on television, it  
23 means anything. I'm just saying, if you're

<p>1 indicating that he -- and he said he started to raise      2 his hand -- and maybe I went a little further than I      3 should have. He said, "No, I didn't, but I disagree,      4 she does represent the State or the citizens of the      5 state."</p> <p>6 I understand your argument. I --      7 admittedly, it's novel because I've not heard it      8 before. But I think you'd have to ask, do you      9 presume that because she represents the State and the      10 State brings a charge, he is guilty, or they are      11 guilty? Now, if that's what you wanted to ask -- or      12 does that cause you to treat him differently or have      13 some bias against him, that's a different situation.</p> <p>14 MR. FIGLIOLA: He was asked the bias      15 question, your Honor. It's the way it was put to him      16 by the State, had not been put to him in voir dire.      17 For example, if the voir dire had said the State is      18 represented by -- the people of the State of Delaware      19 are represented by Miss Kelsey, would that cause you      20 to believe that the defendant is probably guilty, or      21 something like that, that's -- that was not presented      22 in the voir dire, and it generally isn't. It was the      23 first time that I would say that that thought was put</p>	<p>Page 113</p> <p>1 THE COURT: Okay.      2 (Juror Lee enters courtroom.)      3 THE COURT: Mr. Lee, I apologize, but      4 something occurred that I forgot to ask you.      5 Sometimes I get forgetful, so you have to bear with      6 me.</p> <p>7 All right. Let's assume for a moment      8 that it was represented to you, to all the members of      9 the jury, that Miss Kelsey, on behalf -- represented      10 all the citizens of the State of Delaware, okay?      11 This would include you, me, Corrections' officers,      12 the defendants, and everybody in the room. And let's      13 assume you accepted that proposition, that she did,      14 indeed, represent the citizens of the state.</p> <p>15 Would that cause you to be biased      16 against -- biased or prejudiced against the      17 defendants and in favor of the State?</p> <p>18 JUROR: Absolutely not.</p> <p>19 THE COURT: Would it cause you to treat      20 either defendant differently because someone said      21 that -- or because -- or if you agreed that she      22 represented that all the citizens of the State,      23 including the defendants and the Corrections'</p>
<p>Page 114</p> <p>1 to the jury, was during her opening statement.      2 THE COURT: So, what do you want me to      3 do? Disqualify everybody?</p> <p>4 MR. FIGLIOLA: He's the only one that      5 reacted to it, your Honor. The other 13 did not.</p> <p>6 THE COURT: Well, I'll tell you what:      7 I'll bring him back and I'll ask him if the fact that      8 it may have been represented that Miss Kelsey      9 represented the people of the State of Delaware, does      10 that in any way cause him to prejudge whether either      11 defendant is guilty, or does that cause him to be      12 biased against either defendant for any reason, or      13 is -- and is he able to fairly and impartially judge      14 the facts of the case and resolve any disputes of      15 credibility or any dispute of fact without any bias      16 or prejudice?</p> <p>17 MR. FIGLIOLA: That would be fine,      18 your Honor.</p> <p>19 THE COURT: Okay.</p> <p>20 MR. FIGLIOLA: If his answer is in the      21 negative, I guess it would be in the negative, then      22 he would be -- I would have no objection to him      23 remaining.</p>	<p>Page 116</p> <p>1 officers and me, would it cause you to treat either      2 defendant differently than you would if you didn't      3 accept that proposition? In other words, if you      4 assumed for present purposes that Miss Kelsey      5 represents all the citizens of the State, would that      6 cause you to presume or to feel that the defendants      7 were probably guilty, probably did something, or in      8 any way changed the burden of proof in this case?</p> <p>9 JUROR: No, no, I wouldn't assume that      10 they were guilty.</p> <p>11 THE COURT: Would you be able to follow,      12 if I instruct you -- and I do -- that any defendant      13 charged with a crime in this Court is presumed      14 innocent until the State proves otherwise beyond a      15 reasonable doubt?</p> <p>16 JUROR: Absolutely.</p> <p>17 THE COURT: Would a belief that      18 Miss Kelsey represents the citizens of the State, all      19 the citizens of the State, in any way impede or      20 impair your ability to give fair and due      21 consideration to the facts of this case?</p> <p>22 JUROR: It would not.</p> <p>23 THE COURT: Okay. Would it impact upon</p>

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1 your ability to participate as a juror in any way you 2 can think of?	1 BY MS. KELSEY: 2 Q Miss Ayala, how old are you?
3 JUROR: No.	3 A Sixteen, going on 17.
4 THE COURT: Well, I thank you again, 5 Mr. Lee. And, again, I apologize for being 6 forgetful.	4 Q When are you going to be 17? 5 A In three weeks.
7 (Juror Lee leaves courtroom at 3:56 P.M.)	6 Q In three weeks? Okay. 7 Now, you said -- you said your name was a
8 THE COURT: I can see the juror 9 evaluation form now. Judge needs, what is it called, 10 whatever that memory enhancer drug is. I did that 11 for obvious reasons. I didn't want him to be biased 12 against anybody or to either defendant. And if you 13 take something a little off the mark, that's okay.	8 different last name. What did you say your last name 9 was?
14 If he thinks the, he can join my broadening fan club.	10 A Torres.
15 I went as far as I can go. I don't think 16 I can go any further, Mr. Figliola.	11 Q Torres? On the night this happened, your 12 mom said your last name was Ayala. Which is it?
17 MR. FIGLIOLA: I understand, your Honor. 18 I'm satisfied.	13 A It goes Torres first and Ayala.
19 MS. KELSEY: Your Honor, it is abundantly 20 clear that Mr. Lee is not going to be biased in this 21 case.	14 Q So it's both?
22 THE COURT: Well, I don't know. I just 23 didn't -- Mr. Figliola had a perfect right to raise	15 A Mm-hmm.
	16 Q Okay. If I call you Miss Ayala, that 17 won't upset you?
	18 A No.
	19 Q Okay. Now, and your mom was here earlier 20 with you today, wasn't she?
	21 A Yes.
	22 Q And she had to leave?
	23 A Mm-hmm.
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1 it. And I just didn't want him to be upset with 2 either defense counsel or defense -- defendant.	1 Q So, you're still here? You have to 2 answer yes or no. You can't say mm-hmm. And this 3 lady has to take down everything you say. So you 4 have to enunciate distinctly.
3 All right. Bring them back in. Now, 4 Mr. Tease, do you join in anything?	5 Now, did you know a person by the name of 6 Isaias Ortiz?
5 MR. TEASE: I guess I join in that 6 objection, is probably the safe bet to me.	7 A Yes.
7 THE COURT: No problem.	8 Q Is he in the courtroom today?
8 MR. TEASE: Thank you, your Honor.	9 A Yes.
9 MS. KELSEY: Can I get Miss Ayala?	10 Q And where is he seated? Can you point.
10 (Jury enters courtroom at 3:58 P.M.)	11 You have to --
11 THE COURT: Ladies and gentlemen, thank 12 you for your patience. And at times you will not be 13 able to see me because this monitor is taller than I 14 am. But they didn't build these benches for those of 15 you who are vertically challenged.	12 A On the right.
16 All right, call your first witness, 17 ma'am.	13 Q On the right? Which person on the right? 14 In the front table or the back table?
18 MS. KELSEY: Thank you, Judge. State's 19 first witness is Solmari Ayala.	15 A Front table.
20 SOLMARI TORRES AYALA, 21 called as a witness, being duly sworn, was examined 22 and testified as follows:	16 Q And which side on the front table or the 17 back table?
23 DIRECT EXAMINATION	18 A The left side.
	19 Q Okay. The left side of the table or your 20 left? Is he the guy in the white shirt or --
	21 A Yes, in the white shirt.
	22 Q -- or the gray jacket. I guess they both 23 have white shirts on.

	Page 121	Page 123
1	A The guy in the white.	1 Q That's when you got locked up. Is that
2	Q All right. And when did you meet him?	2 also your birthday?
3	A In a Spanish festival, September.	3 A Yes.
4	Q Spanish festival, September?	4 Q And how old were you last year?
5	A Spanish festival last year.	5 A I turned 16.
6	Q How old were you when you met him?	6 Q You turned 16 on your birthday? And on
7	A I was 15.	7 the day that you got locked up, did you see the
8	Q Okay. And after you met him, did you	8 defendant? Did you see Mr. Ortiz?
9	start spending time with him?	9 A Yes.
10	A Yes.	10 Q Okay. Where did you see him? Where did
11	Q Okay. Where did you spend time with him?	11 you first see him that day?
12	A At a house at Fourth and Union.	12 A At Fourth and Union.
13	Q Fourth and Union. Do you remember the	13 Q At where?
14	address?	14 A Fourth and Union.
15	A No.	15 Q And what's at Fourth and Union?
16	Q Was it 1933 --	16 A Hmm?
17	A I guess.	17 Q What's at Fourth and Union?
18	Q -- West Fourth Street?	18 A The apartment.
19	A Yes.	19 Q The apartment? Okay. And what time was
20	Q And where was the apartment when you got	20 that?
21	there to that building?	21 A I don't know.
22	A What is it?	22 Q You don't know?
23	Q Where was the -- place -- was it a whole	23 A No.
	Page 122	Page 124
1	house, or did you stay in part of the house?	1 Q Were you there and he showed up there, or
2	A It was an apartment.	2 was he there and you showed up there? Or --
3	Q An apartment. Do you know what the	3 A We met there.
4	number or the letter of the apartment was?	4 Q Did you talk to him on the phone and
5	A It was an apartment on the back.	5 agree to meet there?
6	Q In the back?	6 A Yes.
7	A Yeah.	7 Q Okay. And did you have anything or
8	Q Okay. Did it have a number or letter?	8 anybody with you?
9	A I don't know.	9 A No.
10	Q You don't know? Okay.	10 Q No? Now, did you have a puppy?
11	And did you have -- did you have a key to	11 A A puppy.
12	that apartment?	12 Q Okay. Did you have the puppy with you
13	A Yes.	13 that day?
14	Q Yes, you did?	14 A I was bringing the puppy from -- from
15	A Yes.	15 where you take the puppies when they're sick.
16	Q Did you ever go there by yourself?	16 Q Okay. And did you have the puppy at your
17	A Yes.	17 house and brought it to the apartment, or was the
18	Q Yes? Okay. Now, do you remember	18 puppy staying at the apartment?
19	October 18?	19 A No, I brought the puppy -- my mom dropped
20	A Yes.	20 me off right there and -- not exactly the house, but
21	Q Okay. And what do you remember -- what's	21 the corner. But the puppy, she -- she was the one
22	important about October 18 for you?	22 that took me to the clinic, and she dropped me off at
23	A That's when I got locked up.	23 the corner.

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1	Q And you had the puppy with you?	1 A Because I call him.
2	A With me.	2 Q You called him on --
3	Q And what did you do with the puppy?	3 A His cell.
4	A The puppy? I put it in the box.	4 Q His cell phone. He had a cell phone?
5	Q You put it in the box. Did you leave it	5 A Yes.
6	at the apartment?	6 Q And how long after you called him did it
7	A Yes.	7 take him to come pick you up?
8	Q And did you see the -- did you see	8 A Like, five minutes.
9	Mr. Ortiz then?	9 Q Five minutes? And where did you go
10	A Yes.	10 when -- once he picked you up?
11	Q He was at the apartment?	11 A Some house in Lancaster.
12	A Mm-hmm.	12 Q Some house on Lancaster Avenue?
13	Q Okay. And then what did you do?	13 Now, did you -- when you left the
14	A I left to my mom's house.	14 apartment where you left the puppy, was he there when
15	Q How long did you stay there?	15 you left?
16	A Over my mom's?	16 A Who?
17	Q No. How long did you stay at the	17 Q The defendant, Mr. Ortiz.
18	apartment?	18 A I can't remember.
19	A For a little bit.	19 Q Okay, that's all right.
20	Q A little bit? Okay. And, then, where	20 But he came and picked you up and went to
21	did you go?	21 a house on Lancaster Avenue?
22	A To my mother's.	22 A Yes.
23	Q Okay. Did Mr. Ortiz come with you?	23 Q Okay. And what did you call the house on
	Page 126	Page 128
1	A No.	1 Lancaster Avenue?
2	Q No? And how long were you at your	2 A Crackhead house.
3	mother's house?	3 Q The crackhead house? Why did you call it
4	A Until, like, later on that night.	4 that? You have to answer. Can you tell --
5	Q Okay. Was that -- was this in the	5 A I don't know.
6	morning when you fooled with the puppy, or was it in	6 Q You don't know? But that's what you
7	the afternoon. It was in the afternoon when you --	7 called it?
8	was it two hours, six hours?	8 Is that a name you made up or is that a
9	A I was about my mom's house -- like, it	9 name he told you?
10	was around 4:00 when I brought the puppy back and	10 A I just made it up.
11	around 6:00 -- around 7:00.	11 Q You just made it up. Okay.
12	Q Around 7:00 when?	12 When you went there, you went to that
13	A When he picked me up at my house.	13 house, was that a whole house or were there
14	Q From your mother's house? Okay.	14 apartments there?
15	And when he picked you up -- do you know	15 A It was apartments.
16	what he was doing in that time period?	16 Q Okay. Which apartment did you go to?
17	A No.	17 A The first apartment.
18	Q Okay. Did he tell you where he was going	18 Q The first one? Okay.
19	or what he was doing?	19 And what did you -- did you knock on the
20	A Mm-mmm, no.	20 door, or did you just walk in, or what did you do?
21	Q No? Okay. When he picked you up, how	21 A We knocked.
22	did he know to come by your mom's house and pick you	22 Q You knocked on the door? And did
23	up?	23 somebody answer the door?

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1	A Yes.	1 A To the dining room.
2	Q And who answered the door?	2 Q To the dining room? Okay. Is that one
3	A I can't remember.	3 big room, or are they separate rooms? Did you see?
4	Q You don't remember? Now, did you -- did	4 A It's almost together.
5	they let you come in?	5 Q They're almost together? Now, okay. And
6	A Yes, when he came in.	6 who was in the dining room?
7	Q Okay. Did they recognize you?	7 A The guy right there.
8	A Hmm?	8 Q The guy in the courtroom?
9	Q Did they recognize you, the person that	9 A Mm-hmm.
10	answered the door? I mean, did they say, you know,	10 Q What table is he seated at?
11	open the door and say who are you, and you had to	11 A At the back table.
12	tell them, or did -- did they open the door and say,	12 Q At the back table. And where is he
13	"Oh, Hi, come on in"?	13 seated at the back table?
14	A They asked who it is, "Who is it?"	14 A In the middle.
15	Q Before they opened the door or after they	15 Q Okay, in the middle. What color shirt
16	opened the door?	16 does he have on?
17	A Before they opened the door.	17 A White.
18	Q And did you tell them?	18 Q Does he have on a jacket or anything?
19	A Yeah. It was me and Isaias.	19 A No.
20	Q Okay. So, Mr. Ortiz, did he answer him,	20 MS. KELSEY: Okay. Your Honor, I would
21	or did you answer him?	21 ask, first of all, that the record reflect that she
22	A He did.	22 earlier identified Mr. Ortiz and she is now
23	Q Okay. And he told his name?	23 identifying Mr. Rivera.
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1	A Mm-hmm.	1 THE COURT: Does he have anything on
2	Q What name did he give him?	2 other than clothes that you can see?
3	A I don't know. He just said "It's me."	3 THE WITNESS: Something -- I don't know
4	Q "It's me"? Okay.	4 what they call it.
5	And, then, the person opened the door?	5 MS. KELSEY: Is it on him?
6	A Yes.	6 THE WITNESS: On his head.
7	Q Okay. And where did you go once you got	7 BY MS. KELSEY:
8	in?	8 Q Where on his head, what part of his head?
9	A There was a lady.	9 A His ears.
10	Q Do you know that lady's name?	10 THE COURT: Earphones, does it look like?
11	A No. And, then, there was the other girl	11 THE WITNESS: Yes.
12	who named Danielle.	12 THE COURT: The record should be so
13	Q There was a girl named Danielle?	13 noted.
14	A Yes. She sitting in the living room, the	14 BY MS. KELSEY:
15	other girl.	15 Q Okay. He was at the dining room table?
16	Q Those two women were in the living room?	16 A Yes.
17	A Mm-hmm.	17 Q Anybody else?
18	Q Where -- was there chairs in the living	18 A No.
19	room or couch?	19 Q You have to answer. I'm sorry. The
20	A Sofas.	20 court reporter is going to shoot us both. You have
21	Q Sofas? And where did you go?	21 to answer the questions with "Yes" or "No."
22	A To the dining room.	22 A No.
23	Q To what?	23 Q How about Mr. Ortiz, did he bring

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1	anything with him?	1 THE COURT: Rephrase the question.
2	A No.	2 MS. KELSEY: Okay.
3	Q Okay. Were the chairs around the table,	3 BY MS. KELSEY:
4	or were you standing up?	4 Q Was there money?
5	A Standing up.	5 A Yes.
6	Q Okay. Anybody put anything on the table?	6 Q Where did it come from?
7	A Money.	7 A From Mr. Rivera.
8	Q Money?	8 Q Okay. And where did it go?
9	A Mm-hmm.	9 A To Isaia.
10	Q Who put that money on the table?	10 Q To Mr. Ortiz?
11	A The guy in the back.	11 A Mm-hmm.
12	Q Okay. Do you know a name for the guy in	12 Q And do you know how much money it was?
13	the back? What did you call him?	13 A No.
14	A Mr. Rivera in the back.	14 Q No? Do you know what it was for?
15	Q Mr. Rivera is in the back? Did you have	15 A No.
16	a nickname for him?	16 Q No? Now, did Mr. Ortiz have something
17	A Yes.	17 out?
18	Q What was the name?	18 A What you mean?
19	A My grandma call him Danny.	19 Q Did you see Mr. Ortiz put something
20	Q Your grandma calls him Danny. How about	20 somewhere?
21	Mr. Ortiz, did you have a nickname for him?	21 MR. FIGLIOLA: Objection, your Honor,
22	A Yes.	22 that's leading.
23	Q And what was that?	23 THE WITNESS: No, it was already in the
	Page 134	Page 136
1	A Freddy.	1 house.
2	Q Freddy? Okay.	2 MS. KELSEY: When they object, you have
3	So, it's Freddy, Danny, and you?	3 to wait until the judge rules on the objection.
4	A Mm-hmm.	4 THE COURT: Rephrase your question.
5	Q Was there anybody else there?	5 MS. KELSEY: Okay.
6	A And the other two girls.	6 BY MS. KELSEY:
7	Q And the other two girls who were in the	7 Q Did you see Mr. Ortiz put something
8	living room?	8 somewhere?
9	A Mm-hmm.	9 A No.
10	Q Were they paying any attention to you?	10 Q You didn't see him --
11	A Yes.	11 A Mm-mmm.
12	Q Are they part -- are they talking, too?	12 Q -- put anything somewhere?
13	A Yeah.	13 A No. It was already in.
14	Q So, all of you are talking?	14 Q What was already in?
15	A Mm-hmm.	15 A The -- the coke was already in the
16	Q Do you know how much money -- who did he	16 crackhead house.
17	give the money too? Who did Mr. Rivera give the	17 Q The coke was already in the crackhead
18	money to.	18 house?
19	MR. TEASE: Your Honor I'm going to	19 A Mm-hmm.
20	object to the form of the question. There's been no	20 Q How do you know that?"
21	evidence that money was given to Mr. Rivera. The	21 A I don't know.
22	second part of the objection is that it sounds	22 Q You don't? Did you see some coke or
23	leading to me.	23 some --

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1	A Yeah.	1 Q Where did it go?
2	Q Okay. Who had it when you saw it?	2 A In my jacket.
3	A It was just there.	3 Q In your jacket? Okay.
4	Q It was just sitting there?	4 Who put it in your jacket?
5	A Mm-hmm.	5 A The guy back there.
6	Q Sitting where?	6 Q Who?
7	A On the table.	7 A The one in the back.
8	Q It was on the table? So there was stuff	8 Q Mr. Rivera put it in your jacket?
9	on the table?	9 A Yes.
10	A What is it?	10 Q Okay. Did he say anything when he put it
11	Q When I asked you if there was anything on	11 in your jacket?
12	the table --	12 A The other girl gave it to me.
13	A The coke.	13 Q What other girl?
14	Q -- you told me no. But there was	14 A Danielle.
15	something there?	15 Q She gave it to you?
16	A The coke was just laying there.	16 A Yeah.
17	Q The coke was just laying there? And when	17 Q And did she say?
18	you were talking, did anybody say anything about the	18 A "You ought to take this."
19	coke just laying there?	19 Q "You ought to take this"?
20	A No.	20 A We had to take that.
21	Q No? Was it -- what did it look like?	21 Q I didn't hear what you said.
22	What did the coke look like?	22 A She told us we had to take that.
23	A It was -- I don't know.	23 Q She told -- us meaning who?
	Page 138	Page 140
1	Q What color was it?	1 A Me and Isaia.
2	A Like, brown.	2 Q Okay. That you had to take that?
3	Q Was it in a bag, in a box, just sitting	3 A That we had to, yeah.
4	on the table?	4 Q Did she say why?
5	A I can't remember.	5 A Hmm?
6	Q You can't remember. How big was it? How	6 MR. TEASE: Judge, objection. Can we
7	many inches wide?	7 approach?
8	A Like this.	8 (The following discussion took place at
9	Q Okay. And how in the other direction?	9 sidebar):
10	Show the jury so they can see.	10 MR. TEASE: Your Honor, my specific
11	The jury. That's the judge. This is the	11 objection there, I think we're talking about what
12	jury. How high?	12 Miss Farmer said, and it doesn't just go to what they
13	A It was like this and -- I really can't	13 did in reaction to what Farmer said or something,
14	remember.	14 it's, like, clearly hearsay. And there's also been a
15	Q You don't remember? Was it packed	15 lot of questions, open-ended questions, what was said
16	together hard, like in a round shape?	16 at that time, where we could be getting to what one
17	A Yes.	17 of the defendants said. So our position, the State's
18	Q How high -- how high up off the table was	18 got to be very careful.
19	it?	19 THE COURT: You don't object to the State
20	A It was just a little -- like that.	20 leading?
21	Q Now, and where did that go? Did it just	21 MS. KELSEY: I'm not leading. I'm
22	stay on the table the whole time you were there?	22 repeating her.
23	A No.	23 THE COURT: What I'm saying is, Mr. Tease

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1 and Mr. Figliola wouldn't object if you have to lead 2 her. We're dealing with a 17-year-old, or almost 3 17-year-old with the mind of about a 13 or 4 14-year-old who doesn't know the difference between 5 the judge and the jury. Plus, she's trying, 6 obviously, to shade her testimony so it's helpful to 7 the defendants.	1 A No, it was not mine. 2 Q Okay. Whose did you think it was? 3 A Them. 4 Q All -- them who? 5 A It belonged from the crackhead house. 6 Q Hmm? 7 A It belonged to the crackhead house. 8 Q And who did you think it was in the 9 crackhead house? 10 A In the crackhead house? A whole bunch of 11 crackheads.
8 Now, I understand your objection and it's 9 well founded, but you're going to have to allow her 10 some leeway to lead this witness to escape the other 11 part. I agree with you, she may say anything. 12 Fortunately, she's not smart enough to know what to 13 say.	12 Q Was there anybody that was there -- had 13 you ever been there before? 14 A Yeah, that's where I got my puppy from. 15 Q Okay. When you -- one time before? 16 A Mm-hmm. 17 Q Who was there when you were there before?
14 MR. TEASE: So, the onus, I think, is on 15 the State, your Honor.	18 MR. TEASE: Objection, objection. Can we 19 approach, I guess? 20 (The following discussion took place at 21 sidebar): 22 THE COURT: Yes, Mr. Tease.
16 THE COURT: But the State is going to 17 have to be able to lead somewhat to overcome your 18 objection. Do you agree to that, or what? 19 MR. TEASE: I think I have to, yes. I 20 know I don't have to, your Honor, but I think I do. 21 MR. FIGLIOLA: I was just going to ask, 22 is Farmer going to testify? 23 MS. KELSEY: Mm-mmm, not that I know of.	23 MR. TEASE: Your Honor, the question put
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1 MR. FIGLIOLA: Okay. 2 THE COURT: So, you have to allow her to 3 lead. Let's try to narrow the questions. 4 MS. KELSEY: Okay. 5 (Sidebar conference concluded.) 6 BY MS. KELSEY: 7 Q Okay. Based on what Miss Farmer said, 8 did you put it in your jacket pocket, or did somebody 9 else put it in your jacket pocket? 10 A She put it in there. 11 Q She did? 12 A Yeah, and gave me my jacket back, and I 13 took it. 14 Q And you took it. And you knew what it 15 was? 16 A Yes, I did. 17 Q Okay. How did you know what it was? 18 A Because I seen it. 19 Q Because you saw it? 20 A Yes. 21 Q And you knew what that was? 22 A Okay. 23 Q Was it yours?	1 to Miss Ayala was, "Have you been to the crackhead 2 house before?" and she said yes, once before. And, 3 then, the question, I think, was going to be, "Who 4 was there?" Now, we're getting into -- 5 THE COURT: Prior bad acts. 6 MR. TEASE: -- prior bad acts. I'm 7 asking for some sort of a proffer. 8 MS. KELSEY: Just being there isn't a 9 prior bad act. Just being -- 10 THE COURT: It depends upon who she's 11 going to say was there, if that's what you're going 12 to ask her. 13 MS. KELSEY: All right. Well, my point 14 is, she said one time she was there before, she got 15 the puppy. That's not a bad act. 16 THE COURT: Okay. But I'm saying, are 17 you going to ask who was there? 18 MS. KELSEY: When she got the puppy, 19 yeah. 20 THE COURT: Why -- 21 MS. KELSEY: I think it shows -- it shows 22 that there were two people who lived there or stayed 23 there all the time, that being Mr. Rivera and

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1 Miss Farmer.	1 A Yes.
2 THE COURT: Well, let's do it this way.	2 Q And when were you there before? When you
3 She referred to it, as you called it, the crackhead	3 got the puppy?
4 house, that was on Fourth Street or Lancaster Avenue?	4 A Yes.
5 It's the one on Lancaster Avenue. Why don't you ask	5 Q Okay. And when you got the puppy, who
6 her, the house on Lancaster Avenue as opposed to the	6 was there?
7 Fourth Street property, you went there and that's	7 A Mr. Rivera and Miss Farmer.
8 where you got your puppy. Who was there then? Let's	8 Q And just those two?
9 try to avoid crackhead house. It's cute but you	9 A Yes.
10 may --	10 Q Okay. When you got the puppy, did you go
11 MS. KELSEY: I didn't make it up.	11 by yourself, or did you go with Mr. Ortiz?
12 THE COURT: -- cause problems all the way	12 A He told me -- I went by myself.
13 around. I know, but you had her say it about six	13 Q You went by yourself? Okay.
14 times now. I think they get the point.	14 Now, the house where you left the puppy
15 So, I sustain the objection. I direct	15 at 1433 or 1933 West Fourth Street, had you ever --
16 you to handle it in that fashion.	16 how long had you been going to that apartment?
17 MS. KELSEY: Yes, your Honor.	17 A Like, for a little less than two weeks
18 THE COURT: Anybody have a problem with	18 before I got arrested.
19 that?	19 THE COURT: You have to speak up.
20 MR. FIGLIOLA: No, your Honor.	20 THE WITNESS: The last two weeks before I
21 MR. TEASE: No, sir, your Honor.	21 got arrested.
22 (Sidebar conference concluded.)	22 BY MS. KELSEY:
23 THE COURT: Ladies and gentlemen, from	23 Q The two weeks before you got arrested.
1 time to time -- and I don't mean to be rude. But	1 And how often would you go? How many times a day
2 from time to time, my secretary or bailiff will have	2 would you go, or how many times a week, or whatever?
3 to come, either bring me something or get something,	3 A Maybe once or twice a day.
4 matters probably sometimes related to this, sometimes	4 Q Okay. And when you went there, was there
5 not, because the business is so jumping, goes on in a	5 ever anyone else there other than Mr. Ortiz?
6 lot of different matters at the same time. So, I	6 A I used to have friends that used to live
7 just wanted to assure you, believe it or not, I can	7 downstairs from the house.
8 do what they call multitasking, I think. It's kind	8 Q Downstairs, is that a different house
9 of like being a parent, you can hear several	9 or --
10 different sources of information at once. So, it's	10 A She used to go to school with me.
11 all judicially Court related, and I just wanted to	11 Q She used to go to school with you.
12 make sure you -- I am, believe it or not, I've been	12 A The apartment on the bottom.
13 doing this for a while, I have a fair sense of what	13 Q The apartment -- was it a different
14 I'm doing. I didn't want you to think that I was not	14 apartment or the same apartment, an upstairs and
15 doing what I was supposed to do. I'm taking notes on	15 downstairs or --
16 the computer. I'm not playing games or having any	16 A It was a different apartment. She live
17 phone conversation. I've had jurors ask me what I	17 downstairs.
18 was doing up there. I tell you up front.	18 Q Okay. But other than in the apartment
19 All right, you may proceed, ma'am.	19 where you went, was there ever anybody else there?
20 MS. KELSEY: Okay.	20 A No.
21 BY MS. KELSEY:	21 Q No? Okay.
22 Q The house -- the house you were at the	22 MS. KELSEY: Could I have one minute,
23 night you got arrested, were you there before?	23 your Honor?

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Condensed

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1	THE COURT: Yes.	1	Q He told you that?
2	MS. KELSEY: I have no further questions,	2	A Yeah.
3	your Honor.	3	Q Okay. Now, when you were arrested, they
4	THE COURT: Mr. Figliola.	4	found a sweater in the back of the BMW; correct?
5	MR. FIGLIOLA: Thank you your Honor.	5	A Mm-hmm.
6	CROSS-EXAMINATION	6	Q And the sweater had the cocaine in it?
7	BY MR. FIGLIOLA:	7	A That was my sweater.
8	Q Good afternoon, Miss Torres.	8	Q Do you remember telling Detective
9	Miss Torres, what were you charged with?	9	Rodriguez that that was your sweater and your
10	A Conspiracy, instead of delivery.	10	cocaine?
11	Q And have those charges been taken care	11	A Yes.
12	of?	12	Q Now, today, you said the cocaine belonged
13	A Yes. I'm on probation still.	13	to the people in the crackhead house.
14	Q Okay. And when did that happen? When	14	A Mm-hmm.
15	did you go on probation?	15	Q Which was the true statement? Was it
16	A It's been -- it's going to be a year now.	16	your cocaine, or did it belong to the people in the
17	Q Okay. Now, you said that you testified	17	crackhead house?
18	that you saw Mr. Ortiz -- did you see him almost	18	A It belonged to the people in the
19	every day for two weeks?	19	crackhead house.
20	A Sometimes. There were times I didn't see	20	Q Okay. When you were hanging around all
21	him.	21	day doing nothing, you weren't selling drugs, were
22	Q Pardon?	22	you, Miss Torres?
23	A There was times I didn't see him.	23	A No, I was waiting for DFS to put me in
	Page 150		Page 152
1	Q There were times you didn't see him?	1	school.
2	Last year in October, were you going to	2	Q You were waiting for somebody to put you
3	school?	3	in school?
4	A No.	4	A DFS.
5	Q No? What would you generally do all day?	5	Q Why weren't you in school?
6	A Me?	6	A Because I had a lot of problems in
7	Q What would you do all day?	7	school. I mean, I was in school but at that time, I
8	A Nothing.	8	was not.
9	THE COURT: You have to speak up.	9	Q How long had you been out of school?
10	THE WITNESS: Nothing.	10	A Since last year.
11	BY MR. FIGLIOLA:	11	Q Since last year? Did you have a job?
12	Q Nothing? Now, when you were arrested, do	12	A Yeah.
13	you remember speaking with either Detective Drysdale	13	Q You did? Where did you go to work?
14	or Detective Rodriguez?	14	A I used to help out at the Spanish
15	A Detective Rodriguez.	15	restaurant, Fourth and DuPont.
16	Q You spoke with Detective Rodriguez? Did	16	Q Spanish restaurant?
17	he give you your Miranda warnings?	17	A Fourth and DuPont.
18	A What is that?	18	Q Okay. What did you do there?
19	Q Miranda warnings, he tells you you're	19	A Help out some lady doing waitress. And I
20	under arrest, you have the right to an attorney,	20	was seven month pregnant. I started at a buffet.
21	anything you say may or may not be used against you	21	Q Okay. Now, the sweater that the drugs
22	in a Court of law.	22	were found in --
23	A Yeah, I think so.	23	A Mm-hmm.

	Page 153	Page 155
1	Q -- did you also know there was money	1 left the dog at the apartment, you say you don't
2	found in that jacket?	2 remember if Mr. Ortiz was there?
3	A Yes.	3 A What you mean?
4	Q That sweater?	4 Q When you brought your dog to West Fourth
5	A Yes.	5 Street --
6	Q Was that your money?	6 A Mm-hmm.
7	A Yes.	7 Q -- and left the dog there, was Mr. Ortiz
8	Q Okay. And how much was there?	8 there when you left the dog?
9	A Almost 400.	9 A Yes. That's where we met.
10	Q Where did that come from?	10 Q I thought you said Mr. Ortiz, you called
11	A My mother, Isaia gave it to me for my	11 him on the cell phone and he picked you up at your
12	birthday.	12 mother's.
13	Q Your mother gave it to you for your	13 A No. I said first that he met me at the
14	birthday?	14 apartment. Then I left to my mother's by myself.
15	A My mother and Isaia.	15 Q Okay. Did Mr. Ortiz have clothes in the
16	Q When did they give it to you? That day?	16 apartment, do you know?
17	A Yeah, when I got out of my house.	17 A No. Only some clothes he bought me.
18	Q What time was that?	18 Q Clothes he brought you? Did you ever see
19	A I don't know.	19 any drugs in that apartment?
20	Q You don't know?	20 A No.
21	A No.	21 Q No? When Mr. Ortiz picked you up, what
22	Q Now, you said you had -- you had a key to	22 car was he in?
23	the apartment on West Fourth Street?	23 A BMW.
	Page 154	Page 156
1	A Yes.	1 Q Okay. Was that his car, do you know?
2	Q How long did you have that key?	2 A Yes.
3	A Like three days.	3 Q Had he always picked you up in that BMW?
4	Q Three days, you never had it before that?	4 A Mm-hmm.
5	A No.	5 Q Did you ever see him in any other car?
6	Q Who did you get the key from?	6 A A red car.
7	A From the girl, from the people from	7 Q Pardon?
8	downstairs.	8 A A red car.
9	Q So, the people that -- the people that	9 Q I can't understand you.
10	lived downstairs had a key to the back apartment?	10 A Some red car.
11	A Yes.	11 Q Some red car, okay.
12	Q And what was the name of the people	12 Did Mr. Ortiz live somewhere else? By
13	downstairs?	13 that I mean, I'm not talking about West Fourth
14	A I only know her by Su-Lee (PH.).	14 Street. Do you know if Mr. Ortiz lived somewhere
15	Q And, so, you got the key from the people	15 else?
16	downstairs and got into the back apartment where you	16 A Yes.
17	used to see Mr. Ortiz?	17 Q He did? Who did he live there with?
18	A Mm-hmm.	18 A His wife.
19	Q Okay. And you left your dog there?	19 Q And where did they live?
20	A Yeah.	20 A Monroe.
21	Q Okay. When did you see your dog again?	21 Q On Monroe Street? Had you ever been to
22	A Never again.	22 that house?
23	Q Never saw your dog again? Now, when you	23 A No.

	Page 157		Page 159
1	Q Were you inside the car when the police	1	BY MR. TEASE:
2	stopped you --	2	Q How are you, Miss Ayala?
3	A Yes.	3	A Fine.
4	Q -- with Mr. -- with Mr. Ortiz?	4	Q Okay. Miss Ayala, when you were
5	A Mm-hmm.	5	testifying in response to Miss Kelsey's questions,
6	Q Okay. Had you started to drive away or	6	you indicated that, when you went to the apartments
7	anything?	7	on Lancaster Avenue, or the apartment, you knocked on
8	A We were just pulling out of the parking.	8	the door; correct?
9	Q Okay. Do you remember telling the	9	A Yes.
10	police -- did you give your -- the police your real	10	Q I guess it was actually Mr. Ortiz knocked
11	name?	11	on the door?
12	A No.	12	A Yes.
13	Q Okay. Do you remember what name you gave	13	Somebody asked, "Who is it?"
14	them?	14	A Mm-hmm.
15	A Maria.	15	Q Right. Mr. Ortiz identified himself or
16	Q Okay.	16	identified the both of you?
17	A I told them I was 22.	17	A He said it was me.
18	Q Did you call your mother when you got to	18	Q And you're not sure who that person was,
19	the police station?	19	correct, who was answering the door?
20	A No.	20	A It was Nemensio Rivera.
21	Q Do you know how your mother got to the	21	Q Okay. You didn't say that on -- when you
22	police station?	22	were asked first. You said you didn't know who it
23	A She found out by somebody seen me get	23	was. Are you changing your testimony now?
	Page 158		Page 160
1	arrested.	1	A No.
2	MR. FIGLIOLA: May I have a second,	2	Q Okay. Do you remember when you were
3	your Honor.	3	asked the first time, you said you didn't know who
4	THE COURT: Mm-hmm.	4	answered the door?
5	(Mr. Figliola conferring with Mr. Ortiz.)	5	A I don't know.
6	BY MR. FIGLIOLA:	6	Q I'm sorry?
7	Q The Lancaster Avenue apartment, other	7	A I don't know.
8	than the evening you left there and the police	8	Q You don't know? Do you remember, the
9	stopped you, other than that one time, had you ever	9	first time when you testified, that you said you
10	been in that apartment other than to pick up your	10	didn't know who answered the door?
11	dog?	11	A I don't remember saying that.
12	A No.	12	Q Okay. Okay. And, then, I think your
13	Q No? You're positive of that?	13	testimony was you go into the apartment with
14	A Yes.	14	Mr. Ortiz, and you described the living room and the
15	Q Why would you refer to it as the	15	dining room; right?
16	crackhead house if you had never been there before?	16	A Mm-hmm.
17	A Because of the crackhead house, both	17	Q Okay.
18	times I went, there were just crackheads coming and	18	THE COURT: Ma'am, you have to answer yes
19	going.	19	or nor.
20	Q Coming and going, a lot of people?	20	THE WITNESS: Yes.
21	A Mm-hmm.	21	BY MR. TEASE:
22	MR. FIGLIOLA: Nothing further.	22	Q Are these rooms that are next to each
23	CROSS-EXAMINATION	23	other?

	Page 161		Page 163
1	A Yes.	1	During the two times that you were there,
2	Q Is there also a kitchen area?	2	you saw people in and out of this apartment?
3	A It's all together.	3	A Yes.
4	Q Okay. Is the kitchen sort of part of the	4	Q And you also indicated that you saw
5	living room, or part of the dining room, or is it a	5	Mr. Rivera putting money on the table?
6	separate room?	6	A Yes.
7	A It's like -- it's not all together,	7	Q Okay. You have no idea how much money
8	because they got the living room, then it got the	8	that was?
9	kitchen back there and the dining room. It's	9	A No.
10	together, the dining room and the kitchen.	10	Q Okay. Did you see what happened to that
11	Q Okay. Do you know if there are bedrooms	11	money?
12	in this apartment?	12	A It went to Isaia.
13	A Hmm?	13	Q I'm sorry? You're saying that it went to
14	Q Are there bedrooms in this apartment?	14	Mr. Ortiz?
15	A I don't know.	15	A Mm-hmm.
16	Q Is there an upstairs to this apartment?	16	Q He picked that money up?
17	A The apartment upstairs?	17	A Mm-hmm.
18	Q No. My question is, in this apartment	18	Q Now, when you're saying that Miss Farmer
19	that you were in, is there -- is there an upstairs to	19	put the drugs in your pocket, where did she get drugs
20	this apartment, or is it just one floor?	20	from? Do you have any idea?
21	A One floor.	21	A On the table.
22	Q Okay. There was a hallway leading away	22	Q Okay. What table?
23	from these rooms that could have gone back to	23	A The dining room table.
	Page 162		Page 164
1	bedrooms?	1	Q Dining room table. She walked over,
2	A I don't know.	2	picked up the drugs, stuffed them in your pocket?
3	Q Okay. Did you see any beds in any of	3	A Yeah.
4	these rooms?	4	MR. TEASE: Your Honor, can I just have a
5	A No.	5	moment with my client? Thank you.
6	Q Okay. Okay. And when you went in, you	6	Thank you, your Honor. Miss Ayala, I
7	saw -- you said there was a lady there and there was	7	have nothing further. Thank you.
8	also a girl there named Danielle; correct?	8	THE COURT: Miss Kelsey, redirect?
9	A Mm-hmm.	9	REDIRECT EXAMINATION
10	Q Okay. Now, you testified twice that it	10	BY MS. KELSEY:
11	was Danielle that put drugs in your jacket; is that	11	Q You had almost \$400 on you when you got
12	right?	12	arrested?
13	A Yes.	13	A Yes.
14	Q And you're certain about that?	14	Q And you said your mother and Mr. Ortiz
15	A Yes.	15	gave you that money?
16	Q Okay. And you also told Mr. Figliola,	16	A Mm-hmm.
17	the gentleman sitting over here, that this was what	17	Q And how much did your mother give you?
18	you called a crack house?	18	A My mother? She gave me a hundred
19	A Yes.	19	dollars.
20	Q Okay. That there were people in and out	20	Q And the rest of the money, who gave you
21	of this apartment during --	21	that?
22	A Yes.	22	A Isaia.
23	Q I'm sorry, let me finish my question.	23	Q Mr. Ortiz gave you the rest? And when

<p style="text-align: right;">Page 165</p> <p>1 had he given it to you?</p> <p>2 A I think the day before.</p> <p>3 Q Okay.</p> <p>4 THE COURT: You have to speak up, ma'am.</p> <p>5 MS. KELSEY: The judge couldn't hear you.</p> <p>6 Could you say that again.</p> <p>7 THE WITNESS: The day before.</p> <p>8 BY MS. KELSEY:</p> <p>9 Q The day before? Are you sure of that?</p> <p>10 A Yes.</p> <p>11 Q Okay. Now, you said you were working at</p> <p>12 the Spanish restaurant?</p> <p>13 A Mm-hmm. Yes.</p> <p>14 Q And on the day that this happened, were</p> <p>15 you working at the Spanish restaurant?</p> <p>16 A No, not that day.</p> <p>17 Q No? When were you working at the Spanish</p> <p>18 restaurant?</p> <p>19 A The day before.</p> <p>20 Q The day before, you worked the Spanish</p> <p>21 restaurant?</p> <p>22 A Mm-hmm.</p> <p>23 Q And you were seven months pregnant the</p>	<p style="text-align: right;">Page 167</p> <p>1 Q I didn't hear you.</p> <p>2 A Like, every other day.</p> <p>3 Q Every other day? And was that in the</p> <p>4 daytime, at night?</p> <p>5 A Daytime.</p> <p>6 Q In the daytime? Did he work?</p> <p>7 A Not that I know of.</p> <p>8 Q Not that you know of?</p> <p>9 MR. FIGLIOLA: It's his watch,</p> <p>10 your Honor.</p> <p>11 THE COURT: Impressive. Take it off, do</p> <p>12 something with it.</p> <p>13 MR. ORTIZ: That's it.</p> <p>14 BY MS. KELSEY:</p> <p>15 Q Who paid for the apartment, 1933 West</p> <p>16 Fourth Street?</p> <p>17 A I guess Isaia.</p> <p>18 MR. FIGLIOLA: Your Honor, I don't know</p> <p>19 how she -- if she has personal knowledge, fine. But</p> <p>20 she can't be guessing who pays for it.</p> <p>21 THE COURT: If your objection is</p> <p>22 foundation, ask her if she has any knowledge.</p> <p>23 BY MS. KELSEY:</p>
<p style="text-align: right;">Page 166</p> <p>1 day before?</p> <p>2 A No. I say I was working at the buffet</p> <p>3 when I was seven months pregnant.</p> <p>4 Q You were working at the buffet when you</p> <p>5 were seven months pregnant.</p> <p>6 A When I --</p> <p>7 Q When was that?</p> <p>8 A A couple months ago.</p> <p>9 Q Hmm?</p> <p>10 A In March, I think.</p> <p>11 Q In March? Okay. So, you weren't</p> <p>12 pregnant, seven months pregnant when this happened?</p> <p>13 A Hmm?</p> <p>14 Q You weren't seven months pregnant when</p> <p>15 this happened?</p> <p>16 A I was working until I was seven months.</p> <p>17 Q Okay. And that was at the buffet and the</p> <p>18 Spanish restaurant?</p> <p>19 A No, that was a buffet by Concord Pike.</p> <p>20 Q Now, how often did you see Mr. Ortiz in</p> <p>21 the month that you knew him?</p> <p>22 A In the month that -- like, every other</p> <p>23 day.</p>	<p style="text-align: right;">Page 168</p> <p>1 Q Did you pay for it?</p> <p>2 A No.</p> <p>3 Q Okay. Did you ever see Mr. Ortiz pay for</p> <p>4 it?</p> <p>5 A No.</p> <p>6 Q So, you don't know who paid for it?</p> <p>7 Okay.</p> <p>8 Did you ever -- did Mr. Ortiz have -- did</p> <p>9 you ever see him with any amount of cash other than</p> <p>10 the \$300 he gave you, almost \$300 he gave you?</p> <p>11 A What was that again?</p> <p>12 Q Did you ever see Mr. Ortiz with any cash</p> <p>13 other than the \$300 he gave you?</p> <p>14 A Did I see him with money?</p> <p>15 Q Yes.</p> <p>16 A Yes.</p> <p>17 Q Like how much money?</p> <p>18 A About 300.</p> <p>19 THE COURT: You have to speak up, ma'am.</p> <p>20 THE WITNESS: Like 300, "400.</p> <p>21 BY MS. KELSEY:</p> <p>22 Q Three hundred, 400?</p> <p>23 A I don't know. I didn't count his money.</p>

	Page 169	
1	Q You didn't count it? Okay.	1 A Leave it in the car.
2	Where was he coming from?	2 Q Why?
3	A When?	3 A Hmm?
4	Q When he came to pick you up, where was he	4 Q Why?
5	coming from? Did he say?	5 A Because that's where it was.
6	A No. I know that day, he was in New York,	6 Q All right. Okay. Where was Mr. Ortiz
7	seeing his daughters.	7 when Danielle handed you the drugs?
8	Q He went to New York to see his daughters?	8 A He was in the kitchen.
9	A Mm-hmm.	9 Q Where was he?
10	Q And how do you know that?	10 A Standing in the kitchen.
11	A He told me.	11 Q Well, in the kitchen where you were, or
12	Q Okay. Were the drugs that Danielle gave	12 somewhere else? Were you still in the dining room?
13	you your drugs?	13 A What?
14	A No.	14 Q Were you with him?
15	Q Whose were they?	15 A Yes.
16	A The crackhead's house.	16 Q Okay. I mean, could he see him -- her do
17	Q They belonged to the house? Okay.	17 that?
18	Why was she giving them to you?	18 A Yes.
19	A So I could take it. She told us we got	19 Q Okay. And how do you know that?
20	to take it.	20 A I don't know.
21	Q Where were you going to put them?	21 Q Did Mr. Ortiz have a key to the
22	A I don't know.	22 apartment?
23	Q Were you going to use them?	23 A Yes.
	Page 170	
1	A No. I don't use drugs.	1 Q How do you know that?
2	Q Well, were you going to keep them? Were	2 A Because -- I don't know.
3	you going to throw them away? What were you going to	3 Q I didn't hear?
4	do with them?	4 A I don't know. My mom told me they find
5	A I don't know. I was going to get dropped	5 the key on him.
6	off at some party.	6 Q Did you ever see him with a key?
7	Q What?	7 A Hmm?
8	A I was going to get dropped off at a	8 Q Did you ever see him with a key?
9	friend's house to go to the party.	9 A Yes.
10	Q You were going to get dropped off where?	10 Q Okay. When you left, did you lock the
11	A After this, I was going to get dropped	11 door?
12	off at a friend to go to party.	12 A If I locked the door?
13	Q Okay. And were you taking the drugs with	13 Q When you left, did you lock the door?
14	you?	14 A No.
15	A No.	15 Q No? Okay. Did you ever -- when you met
16	Q What were you going to do with them?	16 him there that day, was he already inside when you
17	A I was not going to do nothing with them.	17 got there?
18	Q Hmm?	18 A No.
19	A I don't know. I wasn't going to do	19 Q No? How did you get in?
20	nothing with them.	20 A I had a key.
21	Q Well, were you going to wear your jacket?	21 Q You had a key? Did he have a key?
22	A No.	22 A Yes.
23	Q What were you going to do with it?	23 Q Okay. Well, who unlocked the door?
		Page 172

	Page 173	Page 175
1	A What you mean?	1 Q When did he go see his daughters?
2	Q Who unlocked the door, you or him?	2 A He left early in the morning.
3	A I did.	3 Q What time was it that he -- he got back
4	Q You did.	4 to West Fourth Street?
5	A But, then, I left to my mother's.	5 A What is it?
6	Q But you saw his key?	6 Q What time did you meet him at West Fourth
7	A Hmm?	7 Street?
8	Q Did you see his key?	8 A I don't know.
9	A Yes.	9 MR. FIGLIOLA: You don't know? Nothing
10	Q How did you know it was to that	10 further.
11	apartment?	11 THE COURT: Mr. Tease, anything?
12	A I don't know.	12 MR. TEASE: Just briefly, your Honor.
13	MS. KELSEY: I have no further questions.	13 RECROSS-EXAMINATION
14	RECROSS-EXAMINATION	14 BY MR. TEASE:
15	BY MR. FIGLIOLA:	15 Q Miss Ayala, are you having any trouble
16	Q Miss Torres, let's go back to October 18,	16 remembering what happened on that day?
17	2002, your birthday.	17 A I just can't remember about times and
18	A Yes.	18 specific everything.
19	Q You went to 1933 West Fourth Street, you	19 Q So, are the things you're saying today,
20	had a key to the apartment, and you let your dog in;	20 are you absolutely sure about them, or are you --
21	is that correct?	21 A Yes, that day, pled myself guilty. I
22	A Yes.	22 knew everything that was going on.
23	Q Okay.	23 Q I'm just asking, your testimony today,
	Page 174	Page 176
1	THE COURT: You have to speak up, ma'am.	1 there's been some things that you're not too sure
2	I can't -- the jury can't hear you.	2 about and all that. My question to you is, are you
3	BY MR. FIGLIOLA:	3 certain about all this testimony, or are you just
4	Q Yes?	4 giving it your best shot?
5	A Yes.	5 A I'm trying my best.
6	Q And was Mr. Ortiz there? Yes or no.	6 Q Trying your best. But you are foggy
7	A No.	7 about some of what happened?
8	Q He was not there? Okay.	8 A I don't know.
9	A He was supposed to meet me there.	9 MR. TEASE: Okay. Nothing further.
10	Q But he wasn't there because he was in	10 Thank you.
11	New York with his daughters; right?	11 MS. KELSEY: I have nothing further for
12	A Not at the time he was already here.	12 this witness. May she be excused, your Honor?
13	Q But he had already come back?	13 THE COURT: I want to send the jury out
14	A Yes.	14 first.
15	Q And --	15 Ladies and gentlemen, we are finished for
16	A He told me -- I call him. He told me to	16 today, and I am going to excuse you until 10 A.M.
17	meet him at the apartment.	17 tomorrow. Then, we'll -- we should be able to
18	Q But he didn't show up?	18 proceed.
19	A Yes. Then I put my dog in there. My mom	19 Remember the admonitions I gave you.
20	dropped me off on the corner. I came in the house.	20 (Jury leaves courtroom at 4:56 P.M.)
21	Then he came in. I left my dog in there, went to my	21 THE COURT: Ma'am, I'm going to excuse
22	mom's house. Then, I call him again later on, and he	22 you, but I want you to understand something.
23	picked me up.	23 THE WITNESS: Yes.

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1 THE COURT: I didn't appreciate the  
 2 attitude either time you testified. And I didn't  
 3 appreciate, what appeared to me at least, to be your  
 4 lack of candor. Fortunately, I don't decide issues  
 5 of fact in this case. I also want to let you know,  
 6 you came awfully close to not going home. And you're  
 7 over 16, so the WCI which is the adult women's prison  
 8 is where you would go. Fortunately, the State didn't  
 9 press, and neither did the defense attorney. I want  
 10 you to know this is an adult Court.

11 THE WITNESS: Yes.

12 THE COURT: It's not kindergarten, and  
 13 it's not a fun place, and I don't have to be nice. I  
 14 just have to get people to respect the Court.  
 15 Whatever attitude you have, you take it back on the  
 16 street from whence it came because it's not  
 17 appreciated here. I'm not the school system, I'm not  
 18 Family Court, so I don't have to put up with that  
 19 attitude. You better hope our paths never cross  
 20 again professionally, because it won't be a  
 21 particularly -- I'm talking to you and you look at me  
 22 when I'm talking to you. I'm not a kid and I'm not  
 23 your mom, or anybody else. I'm a judge of the

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1 Superior Court, and don't you ever forget that as  
 2 long as you live. None of us have to take that or  
 3 deal with it. And I think you better realize that  
 4 because, in the adult system, we do not tolerate  
 5 that.

6 Do you understand me, then?

7 THE WITNESS: Yes.

8 THE COURT: I'm here, and it's a sign of  
 9 disrespect when you don't look at somebody you're  
 10 talking to. And I can enforce respect to this Court  
 11 because I'll declare you a material witness in a  
 12 heartbeat. So, I suggest you, respectfully and  
 13 quietly, leave the courtroom and hope that nobody has  
 14 to call you back, because I'm not putting up with the  
 15 attitude a third time.

16 Do we understand each other?

17 THE WITNESS: Yes.

18 THE COURT: You may leave.

19 (Witness excused.)

20 THE COURT: Now, Mr. Ortiz, the officers  
 21 are going to take that watch because it's not coming  
 22 back into the courtroom anymore. I don't know  
 23 whether you thought that was funny, didn't know how

1 to shut it off, or what. But let me explain  
 2 something to you so we have this other thing  
 3 straight.

4 First of all, are you suffering from some  
 5 neck disability? Well, then, straighten up your head  
 6 when you talk to me. That's also a sign of  
 7 disrespect in my mind. So, I'm not in the mood  
 8 today, fellow, okay? Now, you better talk with  
 9 somebody else over at the Hill or talk to the  
 10 officers. But we're going to observe a certain sense  
 11 of decorum -- and I'm sure you know what decorum  
 12 means -- in this courtroom. Now, it may have been  
 13 mildly amusing to you to have your watch go off, but  
 14 I can take a watch because this is my courtroom, a  
 15 beeper or anything else. And one thing these fellows  
 16 in blue will do is whatever I order them to do, short  
 17 of hurting each other.

18 Now, if you wish to try me, not a problem  
 19 because I can order anything from full restraints to  
 20 exclusion from the courtroom to the stun belt, if I  
 21 deem it appropriate. And trust me, Mr. Ortiz, I'd do  
 22 it. And if you think I won't, all you have to do is  
 23 evidence some contempt, and we'll see. Now is your

1 time if either you or Mr. Rivera or anybody else  
 2 wants to try me, because I'm in the right frame of  
 3 mind. So, now is the time for you to make the show  
 4 if you think you need to. And don't even look like  
 5 you're going to smirk.

6 MR. ORTIZ: Sorry, because I don't know  
 7 I'm not supposed to bring the watch in here.

8 THE COURT: Did you understand what I  
 9 said and what I meant?

10 MR. ORTIZ: Yes, yes, sir.

11 THE COURT: Sit down. Officer, I know  
 12 you got different notes of the times.

13 UNIDENTIFIED OFFICER: I apologize, sir.

14 THE COURT: But I don't like the  
 15 disruption.

16 UNIDENTIFIED OFFICER: Yes, sir.

17 THE COURT: All right. I'm going up to  
 18 see Judge Smalls now and we'll go forward tomorrow.  
 19 And I'll -- and even if I don't catch him, he's  
 20 usually there until 6:30 or 7:00. He lives real  
 21 close to me, right around the corner, so I can find  
 22 him if I need him. And it's -- what did you call it?  
 23 THE INTERPRETER: What is my name?

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1 THE COURT: What did you call what it is  
 2 you're supposed to?

3 THE INTERPRETER: Suspension and  
 4 insurance calendar.

5 THE COURT: Driving calendar.

6 THE INTERPRETER: Just to let you know,  
 7 your Honor, the judge always comes in at 10:00, and  
 8 if all the pleas are done, my pleas could be first  
 9 and I could be done by 10:15.

10 THE COURT: But you come here first.  
 11 I'll deal with Judge Smalls.

12 THE INTERPRETER: We begin at 8:30 you  
 13 said you begin at 10:00.

14 THE COURT: Make sure you're here at 10  
 15 so we can go forward. I'll go see Judge Smalls now  
 16 and I will find it out. But it shouldn't be a  
 17 problem. We'll work it out so that you don't -- if  
 18 we have to arrange it so that if there's some plea or  
 19 something, we can do it at a time certain. It's no  
 20 problem. We've always cooperated with each other.  
 21 And it's not an issue one way or the other. I mean,  
 22 it's an issue if we don't handle it, but it's not an  
 23 issue if I go up there and talk to him first.

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1 All right. Who do you have tomorrow?

2 MS. KELSEY: Your Honor, Detectives  
 3 Rodriguez and Drysdale and Emory and maybe --

4 THE COURT: And who?

5 MR. FIGLIOLA: Maybe.

6 MS. KELSEY: Emory.

7 THE COURT: Emory, okay.

8 MS. KELSEY: I said Detectives Rodriguez,  
 9 Drysdale, Emory, I'm going to do DiSabatino and  
 10 Mr. Bajwa from the Medical Examiner's Office.

11 THE COURT: I don't think it makes any  
 12 difference to defense attorneys, but Emory I know  
 13 since he was a kid, when he was a baby. I know his  
 14 parents real well and his aunt. We're all from the  
 15 same church. It's not a suppression hearing, so I  
 16 don't see whether it matters one way or the other.  
 17 It's just a kid I watched grow up.

18 MR. FIGLIOLA: It's not a problem,  
 19 your Honor.

20 MR. TEASE: Not here.

21 THE COURT: Okay. I'm sure it's not from  
 22 the State's perspective, for the same reason.

23 MS. KELSEY: No. And just for the

1 record, he did surveillance before they executed the  
 2 search warrant, but he didn't find any drugs or  
 3 interview anybody or do anything like that.

4 THE COURT: It's not, since it's not a  
 5 suppression it's not a credibility issue, but it's a  
 6 lot easier because we're so small, maybe just  
 7 disclose it and it doesn't matter.

8 MS. KELSEY: Actually, I think I already  
 9 knew that.

10 THE COURT: Because we had another case  
 11 where he was surveillance on West Street or East  
 12 Street, something like that.

13 MS. KELSEY: Your Honor, you're way  
 14 beyond my ability to remember the specifics of any  
 15 case.

16 THE COURT: I remember the case because  
 17 the guy said he was walking down the street when they  
 18 snatched him up, which was interesting.

19 But, anyway, all right, we stand in  
 20 recess.

21 (Trial recessed for the day.)

22  
23

1 STATE OF DELAWARE:

2 ss:

3 NEW CASTLE COUNTY:

4 I, Lynne Bell Coale, Registered Merit  
 5 Reporter and Official Court Reporter of the Superior  
 6 Court, State of Delaware, do hereby certify that the  
 7 foregoing is an accurate transcript of the testimony  
 8 adduced and proceedings had, as reported by me in the  
 9 Superior Court of the State of Delaware, in and for  
 10 New Castle County, in the case therein stated, as the  
 11 same remains of record in the Office of the  
 12 Prothonotary at Wilmington, Delaware, and that I am  
 13 neither of counsel nor kin to any party or  
 14 participant in said action nor interested in the  
 15 outcome thereof.

16 WITNESS my hand this 1st day of March,  
 17 2004.

18  
19 Lynne Bell Coale, RMR  
 (Cert No. 165-PS)  
 20 Official Court Reporter

21  
22  
23

**Certificate of Service**

I, ISAIAS R. ORTIZ, hereby certify that I have served a true

And correct cop(ies) of the attached: PETITION FOR WRIT OF HABEAS

CORPUS W/ ATTACHMENTS upon the following

parties/person (s):

TO: Delaware Attorney General

TO: \_\_\_\_\_

Dept. of Justice

820 N. French St.

Wilmington, DE

19802

TO: \_\_\_\_\_

TO: \_\_\_\_\_

\_\_\_\_\_  
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BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 26<sup>th</sup> day of June, 2007

Isaias R. Ortiz

IM: Isdias R. Ortiz

SBI# 480744 UNIT 51

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SMYRNA, DELAWARE 19977



De. District Court  
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Wilmington, DE  
19801

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